# Case Turns File

1. Speech codes work (they empirically create more civil dialogue or whatever)

2. HS violates quality of speech for all (marketplace of insults vs. marketplace of ideas)

3. HS specifically disadvantages minorities (the "free speech for whom?"/myth of meritocracy arg)

4. HS decreases participation (chills minority speech)

5. HS decreases freedom of thought (ppl follow the loudest voices)

6. TPM solves (protect ideas, but regulate expression)

7. HS --> violent backlash

## Generics

### Defense

#### Enforcement of speech codes doesn’t violate expression and successfully combats hate speech – Wisconsin codes prove.

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

-Wisconsin example

-Only cases prosecuted were for racial slurs

The most serious concerns about adopting a rule restricting discriminatory harassment or hate speech were those involving legal questions as to whether any sort of restriction on expressive behavior could be accepted in a university setting. **The Wisconsin cases, however, provide little evidence to suggest that free expression has been deterred or suppressed as a result of enforcement of the university's antiharassment regulation. In the eighteen months in which it has been in force, a total of thirty-two complaints have been filed alleging violations of the Wisconsin rule.14 Of these, thirteen were dismissed because they were found not to violate the rule;35 two were dismissed following a hearing;** and in ten cases, discipline was imposed. 36 The disci- plinary sanctions imposed included one written apology, one warn- ing letter, seven disciplinary probations and one suspension.37 **All cases resulting in probation or suspension also involved conduct which violated some other provision of the student conduct code- an assault, a threat, or disorderly conduct, for example.38 In no case was discipline imposed in connection with a classroom dis- cussion or expression of opinion.3 9 In most of the cases leading to discipline, the rule violation involved the use of a discriminatory epithet rather than "other expressive behavior."**

#### Plan does nothing – it can’t change the culture on campuses that condemns free speech and prizes other values more

**Leef:** Leef, George [George Leef is director of research for the John William Pope Center for Higher Education Policy. He holds a bachelor of arts degree from Carroll College (Waukesha, WI) and a juris doctor from Duke University School of Law. He was a vice president of the John Locke Foundation until the Pope Center became independent in 2003.] “Will the Surge of Support for Free Speech on Campus Do Any Good?” November 2016. RP

-Circumvention – won’t obey speech policies

-Uniqueness arg – can’t change the culture

Will it do much good, though? **The reason to doubt that it will is the well-entrenched idea among many college leaders that while free speech is good, they have to “balance” it with other considerations. Yale University provides an object lesson. Last fall, the campus erupted when one faculty member, Erika Christakis, wrote a harmless email that mildly dissented from the idea that students must take abundant care not to choose a Halloween costume that might be thought offensive by anyone. Merely writing that email led to a vitriolic protest by students and when her husband, Nicholas Christakis, dared to address the crowd and try to restore calm, things degenerated into a screaming tirade against him. (You can read about the event here.) How did Yale’s president Peter Salovey respond? Rather than defending free speech and civility, he chose to succor the protesting students, meekly saying, “I failed you.” Subsequently, vengeful students hounded the Christakises to the point where they decided to resign and leave Yale**. In a recent op-ed, Salovey wrote that Yale values “free expression as well as inclusivity.” But as a famous Yale Law School graduate Professor Richard Epstein notes in this piece, Salovey did nothing to defend the Christakises and that as between free expression and inclusivity, “the massive level of abuse directed at Nicholas and Erika Christakis reveals how strongly Yale weighs one imperative over the other.” **Epstein is right that free speech takes a back seat in Yale’s priorities. The same is true at many other colleges and universities. Officials pay lip service to free speech but when they have to choose between upholding it and placating student radicals who don’t believe in it, they behave the way Salovey did. When college leaders try to juggle free speech along with “diversity” and “inclusion” the usual result is that free speech gets dropped.** As Epstein observes, “protected groups get to complain loudly about microaggressions against them, but they, in turn, are entitled to venomously attack those with whom they disagree.” Officials at many schools besides Yale take that “free speech is important, but” approach. Consider Iowa State, where the school is so angst ridden over the possibility that some student might be offended by what another says that it has a severely restrictive speech and “harassment” policy. Then it tells students who are reluctant to pledge to abide by it that they risk not being allowed to graduate if they don’t. **Elegant defenses of freedom of speech aren’t worth the paper they’re printed on unless college officials stop giving aid and comfort to those who demand that speech be controlled to satisfy them.**

#### Status quo solves – you can express your ideas in a reasonable time, place, or manner.

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “The Debates Over Placing Limits on Racist Speech Must Not Ignore the Damage It Does to Its Victims.” *The Chronicle of Higher Education.* 1989. RP

-No need for free speech

-Express in other contexts

**Carefully drafted university regulations would bar the use of words as assault weapons and leave unregulated even the most heinous of ideas when those ideas are presented at times and places and in manners that provide an opportunity for reasoned rebuttal or escape from immediate injury. The history of the development of the right to free speech has been one of carefully evaluating the importance of free expression and its effects on other important societal interests**. We have drawn the line between protected and unprotected speech before without dire results. (Courts have, for example, exempted from the protection of the First Amendment obscene speech and speech that disseminates official secrets, that defames or libels another person, or that is used to form a conspiracy or monopoly.)

#### Plan can’t solve – the right to free speech isn’t enforced on campuses – Yale proves.

**Kurtz:** Kurtz, Stanley [Contributor, National Review] “A Plan to Restore Free Speech on Campus.” *The Corner.* December 2015. RP

-Circumvention empirically shown

-Yale student heckled and wasn’t sanctioned

-Colleges don’t fulfill positive obligations to free speech

Third: “**A university administration’s responsibility for assuring free expression imposes further obligations: it must act firmly when a speech is disrupted or when disruption is attempted; it must undertake to identify disruptors, and it must make known its intentions to do so beforehand.”** The above passage is from Yale’s Woodward Report. Although the Woodward Report is official university policy at Yale, some of its central recommendations are apparently not being taken seriously. **Consider the recent controversy over freedom of speech at Yale, where a student had to be dragged out of a lecture hall by a police officer after disrupting the William F. Buckley, Jr. Program’s conference on free speech (video here). The conduct of this student would appear to be a violation of Yale’s Undergraduate Regulations on “peaceful dissent, protests, and demonstrations” (derived from the Woodward Report), which bar any member of the University community from preventing “the orderly conduct of a University function or activity, such as a lecture, meeting...or other public event,” on pain of potential suspension or expulsion. If Yale’s regulations were being properly enforced, this student would have faced a disciplinary hearing.** **Ultimately, if the facts turned out to be as they appear from the video and published reports, some sort of discipline would result — at minimum, a warning that any further such actions would bring certain suspension or expulsion. To all appearances, no such discipline has taken place.** **And appearances are important, because a core recommendation of the Woodward Report is that in order to serve as effective deterrents to further violations, sanctions for disruption of speech must be publicized.** (I have submitted a series of questions to Yale’s administration on disciplinary proceedings related to the disruption at the Buckley Program conference on free speech, and will report when I receive a reply.)

#### Colleges circumvent the Aff and just rebrand speech codes as “anti-harassment policies”

**Hardiman:** Hardiman, Kate [Professor, University of Notre Dam] “‘Welcome to college – now be quiet!’ Many campuses maintain militant speech codes.” *The College Fix.* August 2015. RP

-Rename speech codes as something different

-Eliminating speech codes doesn’t mean less censorship

**A majority of universities across the nation continue to infringe upon their students’ First Amendment right to free speech**, according to a 2015 survey of campus policies published by the Foundation for Individual Rights in Education. Once bastions of free expression and open debate, modern American universities prohibit speech in a variety of ways to protect students from ideas some deem “offensive,” “harmful” or “upsetting.” According to the foundation’s report, “Spotlight on Speech Codes 2015: The State of Free Speech on Our Nation’s Campuses,” **nearly 55 percent of the 437 universities analyzed have “policies that clearly and substantially prohibit protected speech,” earning the group’s “Red Light” designation**. FIRE conducts a yearly free speech review of the nation’s universities to assess their adherence to the First Amendment, and this year’s stats showed nominal improvement over previous ones. “Last year, that figure stood at 58.6 percent; **this is the seventh year in a row that the percentage of schools maintaining such policies has declined,” the group noted. But don’t pop the champagne cork just yet.** The foundation’s president, Greg Lukianoff, co-penned a cover story for The Atlantic this month which warns the tide has turned so far that now some students want protection from other students’ and professors’ “scary ideas.” “**A movement is arising, undirected and driven largely by students, to scrub campuses clean of words, ideas, and subjects that might cause discomfort or give offense,” he wrote**. “This new climate is slowly being institutionalized, and is affecting what can be said in the classroom, even as a basis for discussion.” **While the percentage of higher education institutions with restrictive speech codes appears to have declined over the past six years, FIRE reports that many speech codes may simply have been rebranded as “anti-harassment policies” following pressure from the Department of Education’s Office for Civil Rights. Universities even hold faculty training sessions to familiarize them with new anti-harassment policies**, such as the University of California’s microaggression training seminars for faculty leaders. In these sessions, professors were taught that saying “America is the land of opportunity” is an offensive “microaggression.”

### Uniqueness Takeouts

#### Current protections against hate speech are working – on campus harrassment is decreasing nationally now.

Sutton 16 Halley Sutton, Report shows crime on campus down across the country, Campus Security Report 13.4 (2016), 9/9/16,http://onlinelibrary.wiley.com/doi/10.1002/casr.30185/full

**A recent report released by the National Center for Education Statistics found an overall decrease in crimes at educational institutions across the country since 2001. The overall number of crimes reported by postsecondary institutions has dropped by 34 percent**, from 41,600 per year in 2001 to 27,600 per year in 2013. The report, titled Indicators of School Crime and Safety: 2015, covers higher education campuses as well as K–12 schools and includes such topics as victimization, teacher injury, bullying and cyberbullying, use of drugs and alcohol, and criminal incidents at postsecondary institutions. T**he report found significant decreases in instances of bullying, harassment due to sexual orientation, and violent crime at all levels of** education. **The number of on-campus crimes reported at postsecondary institutions in 2013 was lower than in 2001 for every category except forcible sex offenses and** **murder**.

#### The worst speech codes can be resisted and fought in court – they’re being defeated now

FIRE ’16 Foundation for Individual Rights in Education,(FIRE launched its Stand Up for Free Speech Litigation Project in July 2014 to combat campus speech codes, so far 7 lawsuits have been successful in removing campus speech codes) On Speech Codes, The State of Free Speech on Our Nation’s Campuses, FIRE, 2016, Date Accessed 12/5/16 <https://d28htnjz2elwuj.cloudfront.net/wp-content/uploads/2013/06/27212854/SCR_Final-Single_Pages.pdf>

-Lawsuits currently happening against speech codes

-Most violent speech codes being eliminated

The good news is that the types of restrictions discussed in this report can be defeated. A student can be a tremendously effective advocate for change when he or she is aware of First Amendment rights and is willing to engage administrators in defense of them. P**ublic exposure is also critical to defeating speech codes, since universities are often unwilling to defend their speech codes in the face of public criticism. Unconstitutional policies also can also be defeated in court, especially at public universities, where speech codes have been struck down in federal courts across the country**. Many more policies have been revised in favor of free speech as the result of legal settlements, including seven cases brought since July 2014 as part of FIRE’s Stand Up For Speech Litigation Project. Any speech code in force at a public university is extremely vulnerable to a constitutional challenge. Moreover, a**s speech codes are consistently defeated in court, administrators are losing virtually any chance of credibly arguing that they are unaware of the law, which means that they may be held personally liable when they are responsible for their schools’ violations of constitutional rights**.58 The suppression of free speech at American universities is a national scandal. But supporters of liberty should take heart: While many colleges and universities might seem at times to believe that they exist in a vacuum, the truth is that neither our nation’s courts nor its citizens look favorably upon speech codes or other restrictions on basic freedoms.

#### Status quo speech codes block the alt right from spreading even further.

**Burley:** Burley, Shane [Contributor, Waging Nonviolence] “How the Alt Right is trying to create a ‘safe space’ for racism on college campuses.” *Waging Nonviolence.* October 2016. RP

-Speakers banned from campuses + heckling

-Milo example

**While the Alt Right is fighting for a platform, many on college campuses are taking the example of groups like the One People’s Project and are rallying community pressure to disallow Alt Right speakers regular access to collegiate forums. At DePaul University, Alt Right commentator and Gays for Trump founder Milo Yiannopoulos was brought by the College Republicans. Ahead of this, a petition began circulating, largely stemming out of the Black Student Union work, to push DePaul to do more about hate speech on campus. Protesters disrupted the event by getting on stage and preventing him from speaking, functionally ending it. The college later canceled Yiannopoulos’s second scheduled speech, citing his provocative rhetoric as the reason.** Protesters later attempted to disrupt a debate-watching party where Trump student supporters had congregated to root for their candidate.

#### College learning environments work fine in the status quo – controversial issues are discussed

**Moreno:** Jonathan D. Moreno, Warning: My Class Is One Big Trigger, Sep 07, 2016, Huffington Post. RP

-Civic engagement and discussion high now

-Aff only gives examples of abberations – most discussion is fine

We’ve been hearing a lot these days about trigger warnings as a phenomenon in American higher education, that teachers are being expected to warn their students if assigned material might upset them. Respected social scientists have argued that trigger warnings pose a serious problem with modern academic culture by impeding students’ growth and exaggerating their sensitivities. **There have been several high-profile incidents involving the withdrawal of speaking invitations and some professors have complained that they feel constrained in what they can teach. I must have missed that memo. Anyway, it doesn’t describe the university I know. I’ve seen no evidence that education has been stifled.** And if instructors are giving more such warnings, so what**? If this practice had the dire consequences that critics of American higher education sometimes claim the typical course catalog would be a lot smaller than it is. Here, for example, are some of the topics and cases I will cover in my bioethics class this fall: Male impotence; physicians who have sex with their patients; a severely burned young man’s request to die; a female college student who was killed by a mentally ill suitor; a young woman with cancer whose doctor helps her end her life; post-traumatic stress disorder; genetically transmitted disease; exploitive human experiments and gender identity. And that’s only a partial list. I’ve taught this course at the University of Pennsylvania since 2008. Every time I offer it student demand exceeds the formal registration limit, as it has this fall.** (I can’t take all the credit for the course’s popularity. The issues are compelling and I do show a lot of illustrative film clips, though some of them are disturbing, too.) Long before all the trigger talk started I’ve been giving two warnings the first day of class: first, that in our discussions someone might feel compelled to mention their own medical problem or that of a member their family but that I can’t guarantee confidentiality; second, that they might find a film depicting a disfigured patient disturbing. I regard these warnings as a courtesy, not correctness. But otherwise the beat goes on. Jewish students learn about the vicious concentration camp experiments that inspired modern research codes; African-American students sit through lectures about the syphilis study; feminists hear me talk about fertility clinics that cater to parents who want a male child; gay men read about being excluded from giving blood because of HIV fears; students on medication for hyperactivity disorder have to think about the way some of their peers use the same drugs to enhance their performance. If campuses truly are permeated by political correctness put me down as an equal opportunity offender. **In spite of the intensity of the subject matter, I’ve found that when my undergrads get annoyed at me it’s usually because I’m late getting my slides up on the course website, not because I’ve broached emotionally difficult material. They seem to understand that there’s no other way for me to teach this course. Nor are people in their late teens and early twenties necessarily taken aback by what us oldsters might expect.** Once while teaching a late afternoon class on ethical issues in gravely ill newborns a young man complained to me that he almost lost his lunch during a film of a baby being delivered. There was no complaint of emotional scarring but it did make me doubt the wisdom of his plan to study medicine.

#### Students are globally aware – they know politics and challenge existing ideology.

**Levine:** Levine, Saul [Professor, UC San Diego] “College Students: Coddled or Constructive Activists?” Sep 2016. RP

-Civic engagement high now

-Media, TV, internet inform students

-Social activism happening

**Lest you think that today's students are ignorant of prevalent political and societal unrest, let me assure you that this is not the case. In this era of 24/7 internet and media, they are more aware than most of us were at their ages. You might also notice, however, that all is not serene, and that there is as much ferment and anger as ever. You have likely read recent newspaper stories about student-faculty confrontations at Oberlin, Yale University, and the University of Chicago, but these are in fact occurring at many colleges. In these events, outspoken students are extremely concerned about their personal travails and social pressures on campus**. They are frustrated about perceived personal slights and injustices, psychologically toxic environments, political correctness and bruised feelings. Students on many campuses are clamoring for protection from psychological "triggers" in the curriculum or in campus announcements. They are demanding designated "safe zones," where they can feel secure, protected from those whose words or tones of voice they find distasteful, unacceptable or even threatening. Many also expect personal attention for their feelings and vulnerabilities. Some complaints have to do with perceived hectoring by faculty and administrators about how to act in certain situations. They say they’re being infantilized, not treated respectfully as adults. On the other hand, there are demands that colleges provide individual attention for their personal and pedagogic difficulties. Others criticize professors either for not being culturally sensitive to their particular group (religion, race, language, dress, gender or gender identity), or for pandering in offensive ways, trying too hard to assuage perceived offense. In a few of the filmed vociferous confrontations, indignant students were shown yelling, swearing, and sobbing. They felt unheard and they upbraided faculty and administrators for being dense or duplicitous, or even dangerous and evil. There have been threats of lawsuits, removal of donor funding, or even violence. This not meant to be a litany of complaints about contemporary students, who are an impressive generation. College is a major step in their personal maturation and socialization,

#### Civic engagement and protests are increasing in the status quo

**Higher Education Research Institute:** Higher Education Resarch Institute “College Students’ Commitment to Activism, Political and Civic Engagement Reach All-Time Highs.” *UCLA Newsroom.* February 2016. RP

-Survey of activism across the country

-Students likely to protest

-Higher than ever

**Colleges and universities across the U.S. experienced an increase in student activism over the past year**, as students protested rising college costs and hostile racial climates on their campuses. Now, findings from UCLA’s annual CIRP Freshman Survey (PDF) suggest that participation in demonstrations may intensify in the months ahead. **The survey of 141,189 full-time, first-year students from around the U.S. found that interest in political and civic engagement has reached the highest levels since the study began 50 years ago**. Nearly 1 in 10 incoming first-year students expects to participate in student protests while in college. The survey, part of the Cooperative Institutional Research Program, is administered nationally by the Higher Education Research Institute at the UCLA Graduate School of Education and Information Studies. The 8.5 percent who said they have a “very good chance” of participating in student protests while in college represents the highest mark in the survey’s history and is an increase of 2.9 percentage points over the 2014 survey. **Black students were the most likely to expect to protest, with 16 percent reporting that they had a very good chance of demonstrating for a cause while in college — 5.5 percentage points higher than in 2014. The rising interest in activism coincides with some recent successful protests by college students**. After months of protesting a perceived lack of responsiveness by university administrators to racial bias and discrimination, University of Missouri students forced the resignation of the system’s president in November 2015. “**Student activism seems to be experiencing a revival, and last fall’s incoming freshman class appears more likely than any before it to take advantage of opportunities to participate in this part of the political process**,” said Kevin Eagan, director of CIRP. “We observed substantial gains in students’ interest in political and community engagement across nearly every item on the survey related to these issues.”

### Cooptation DA

#### Violent agitators coopt protests – turns free speech

Nguyen: [(Tina, writer @ Vanity Fair) “TRUMP THREATENS TO DEFUND U.C. BERKELEY AFTER STUDENTS PROTEST BREITBART WRITER” February 2, 2017, <http://www.vanityfair.com/news/2017/02/uc-berkeley-protests-milo-yiannopolous>]

-Undermines free speech – peaceful protesters drowned out

-Berkeley example – violent protesters showed up

Yiannopoulos, who gained notoriety during the Trump campaign as a popular figure within the “alt-right” movement, blamed **“violent left-wing protesters**” for **shut**ting **down the event**, writing on his Facebook page that, “The Left is absolutely terrified of free speech and will do literally anything to shut it down.” **More than 1,500 demonstrators gathered outside the venue to protest Yiannopoulos’s appearance, The Washington Post reported, a protest that grew violent when a large group of agitators showed up, hurling rocks and Molotov cocktails.** It was unclear whether the masked protesters were Berkeley students. Campus officials instituted a “shelter in place” order, and police eventually fired pand pepper balls into to the crowd to disperse it, according to the local police chief. The optics could not have been worse for Berkeley, the birthplace of the Free Speech Movement in the 1960s and a longtime center of nonviolent protest movements. Breitbart writer Tom Ciccotta seized the opportunity to argue that by rioting, the students had “betrayed” their university and proved Yiannopoulos correct in his denunciations of liberal culture. In a statement, the college expressed profound disappointment that “**the threats and unlawful actions of a few have interfered with the exercise of First Amendment rights** on a campus that is proud of its history and legacy as the home of the Free Speech Movement.”

### A2 Race

#### Meta studies of colleges prove that speech codes do solve even if not enforced by changing culture

**Gould:** (Jon B. Gould is a professor in the Department of Justice, Law and Society and at the Washington College of Law at American University, where he is also director of the Washington Institute for Public and International Affairs Research. 2010-02-15, University of Chicago Press, “Speak No Evil: The Triumph of Hate Speech Regulation”

-Anonymous survey of colleges

-Speech codes not enforced often but deter

-Alongside educational programs

**Yet the very adoption of hate speech policies has influenced behavior on several campuses. This point was repeated to me by many administrators at the schools I visited, who reported the rise of a “culture of civility” that eschews, if not informally sanctions, hateful speech**. “Don’t mistake symbolism for impotence,” they regularly reminded me. Symbols shape and reflect social meaning, providing cues to the community about the range of acceptable behavior. Adopting a hate speech policy, then, could have persuasive power even if it were rarely enforced. Consider the dean of students at a northeastern liberal arts college, who spoke proudly of her school’s hate speech policy. Had the policy been formally invoked, I asked. “Rarely,” she told me, but the measure “sets a standard on campus. It gives us something we can point our finger to in the catalog to remind students of the expectations and rights we all have in the community.” This sentiment was repeated by the president of a well-known institution, who claimed that “we didn’t set out to enforce the policy punitively but to use it as the basis for our educational efforts at respecting individuality.” **Still another administrator admitted that, “while we’ve rarely used the policy formally, it does give support to students who believe their rights have been violated. They’ll come in for informal mediation and point to the policy as the reason for why the other person must stop harassing them.” Sociologists would call this process norm production— that symbolic measures can condition and order behavior without the actual implementation of punitive mechanisms.** 8 Hate speech policies set an expected standard of behavior on campus; college officials employ orientation sessions, extracurricular programs, and campus dialogue to inculcate and spread the message; and over time an expectation begins to take root that hate speech is unacceptable and should be prohibited. **Of course, this mechanism makes regulation a self-policing exercise— colleges need not take formal or punitive action— but the effect is to perpetuate a collective norm that sees hate speech as undesirable and worthy of prohibition.** Moreover, considering the isomorphic tendencies of college administrators, the creation of speech policies— or speech norms— at respected and prestigious institutions has a “trickle down” effect throughout academe. Again, sociologists would call this process normative isomorphism, but most people know the phenomenon as “keeping up with the Joneses.” 9 If Harvard, Berkeley, or Brown passes measures against hate speech, then institutions lower in the academic food chain are likely to take note and follow suit. If prestigious institutions advance campus norms that eschew hate speech, then both peer and “wannabe” institutions are likely to consider and replicate such informal rules. Indeed, this is the very fear of FIRE and its compatriots— that if PC policies are not checked now, their message will spread throughout academe infecting other campuses. What FIRE fails to say, but undoubtedly must be thinking, is that informal law and mass constitutionalism are at stake if the spread of speech regulation is not curbed. FIRE can hang its hat on R.A.V., Doe, UWM Post, and the other court cases in which judges have overturned college hate speech policies, but as hate speech regulation continues to flourish on college campuses, informal speech norms are at stake throughout the larger bounds of civil society.Whatever one thinks of FIRE and its agenda, its supporters are like the oldfashioned fire brigade that excitedly shows up at a burning building only to toss paltry pails of water on the inferno. Hate speech regulation has already crossed the firebreak between academe and the rest of civil society and is well on its way toward acceptance in other influential institutions. **The initial signs are found in surveys of incoming college freshmen. Shortly after R.A.V., researchers began asking new freshmen whether they believe that “colleges should prohibit racist/sexist speech on campus.” 10 In a 1993 survey, 58 percent of first-year students supported hate speech regulation, a number that has stayed steady and even grown a bit in the years following. By 1994, two thirds of incoming freshmen approved of hate speech prohibitions, with more recent results leveling off around 60 percent. 11 Unfortunately, there are not similar surveys before 1993 to compare these results against, but it is a safe bet that support would have been minimal through the mid-1980s when the issue had not yet achieved salience. More to the point, the surveys show that support for speech regulation is achieved before students ever set foot on campus. If, as the codes’ opponents claim, colleges are indoctrinating students in favor of speech regulation, the influence has reached beyond campus borders. New students are being socialized to this norm in society even before they attend college.**

#### Free speech isn’t without harm – universal recognition of it leads to minority causalities and genocide

**Epps:** Epps, Garrett [Contributor, The Atlantic] “Free Speech Isn't Free.” *The Atlantic.* February 2014. RP

-Standpoint of white privilege to assume universally good

-Nazis relied on free speech

-Marketplace of ideas not perfect – sometimes allows bad speech

-Minorities are victims – they experience psychological damage

**Most journalistic defenses of free speech take the form of "shut up and speak freely."** The Beast itself provides Exhibit A: Cultural news editor Michael Moynihan announced that "we're one of the few countries in the Western world that takes freedom of speech seriously," and indignantly defended it against "those who pretend to be worried about trampling innocents in a crowded theater but are more interested in trampling your right to say whatever you damn well please." To Moynihan, Rosenbaum could not possibly be sincere or principled; he is just a would-be tyrant. The arguments about harm were "thin gruel"—not even worth answering. Moynihan's response isn't really an argument; it's a defense of privilege, like a Big Tobacco paean to the right to smoke in public. In contrast to this standard-issue tantrum is a genuinely thoughtful and appropriate response from Jonathan Rauch at The Volokh Conspiracy, now a part of the Washington Post's web empire. Rauch responds that painful though hate speech may be for individual members of minorities or other targeted groups, its toleration is to their great collective benefit, because in a climate of free intellectual exchange hateful and bigoted ideas are refuted and discredited, not merely suppressed .... That is how we gay folks achieved the stunning gains we've made in America: by arguing toward truth. I think he's right. But the argument isn't complete without conceding something most speech advocates don't like to admit: **Free speech does do harm. It does a lot of harm. And while it may produce social good much of the time, there's no guarantee—no "invisible hand" of the intellectual market—that ensures that on balance it does more good than harm.** As Rauch says, it has produced a good result in the case of the gay-rights movement. But sometimes it doesn't. **Europeans remember a time when free speech didn't produce a happy ending.** They don't live in a North Korea-style dystopia. They do "take free speech seriously," and in fact many of them think their system of free speech is freer than ours. **Their view of human rights was forged immediately after World War II, and one lesson they took from it was that democratic institutions can be destroyed from within by forces like the** Nazis who use mass communication to dehumanize whole races **and religions, preparing the population to accept exclusion and even extermination.** For that reason, some major human-rights instruments state that "incitement" to racial hatred, and "propaganda for war," not only may but must be forbidden. The same treaties strongly protect freedom of expression and opinion, but they set a boundary at what we call "hate speech." It's a mistake to think that the U.S. system goes back to the foundation of the republic. At the end of World War II, in fact, our law was about the same as Europe's is today. The Supreme Court in Beauharnais v. Illinois (1952) upheld a state "group libel" law that made it a crime to publish anything that "exposes the citizens of any race, color, creed or religion to contempt, derision, or obloquy." European countries outlawed fascist and neo-Nazi parties; in the 1951 case Dennis v. United States, the Supreme Court upheld a federal statute that in essence outlawed the Communist Party as a "conspiracy" to advocate overthrowing the U.S. government. Justice Robert H. Jackson, who had been the chief U.S. prosecutor of Nazi war criminals, concurred in Dennis, warning that totalitarianism had produced "the intervention between the state and the citizen of permanently organized, well financed, semi- secret and highly disciplined political organizations." A totalitarian party "denies to its own members at the same time the freedom to dissent, to debate, to deviate from the party line, and enforces its authoritarian rule by crude purges, if nothing more violent." Beauharnais, Dennis, and similar cases were criticized at the time, and today they seem grievously wrong. But many thoughtful people supported those results at the time. U.S. law only began to protect hateful speech in the 1960s. The reason: Repressive Southern states were trying to criminalize the civil-rights movement. U.S. law only began to protect hateful speech during the 1960s. The reason, in retrospect, is clear—repressive Southern state governments were trying to criminalize the civil-rights movement for its advocacy of change. White Southerners claimed (and many really believed) that the teachings of figures like Martin Luther King or Malcolm X were "hate speech" and would produce "race war." By the end of the decade, the Court had held that governments couldn't outlaw speech advocating law violation or even violent revolution. Neither Black Panthers nor the KKK nor Nazi groups could be marked off as beyond the pale purely on the basis of their message. Those decisions paved the way for triumphs by civil rights, feminist, and gay-rights groups. **But let's not pretend that nobody got hurt along the way. The price for our freedom—a price in genuine pain and intimidation—was paid by Holocaust survivors in Skokie and by civil-rights and women's-rights advocates subjected to vile abuse in public and private, and by gay men and lesbians who endured decades of deafening homophobic propaganda before the tide of public opinion turned. Free speech can't be reaffirmed by drowning out its critics**. It has to be defended as, in the words of Justice Oliver Wendell Holmes, "an experiment, as all life is an experiment." I admire people on both sides who admit that we can't be sure we've drawn the line properly. In Dennis, the case about Communists, Justice Felix Frankfurter voted to uphold the convictions. That vote is a disgrace; but it is slightly mitigated by this sentence in his concurrence: "Suppressing advocates of overthrow inevitably will also silence critics who do not advocate overthrow but fear that their criticism may be so construed .... It is a sobering fact that, in sustaining the convictions before us, we can hardly escape restriction on the interchange of ideas." When Holmes at last decided that subversive speech should be protected, he did so knowing full well that his rule, if adopted, might begin the death agony of democracy. "If in the long run the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community," he wrote in his dissent in Gitlow v. New York, "the only meaning of free speech is that they should be given their chance and have their way." The reason that we allow speech cannot be that it is harmless. It must be that we prefer that people harm each other, and society, through speech than through bullets and bombs. American society is huge, brawling, and deeply divided against itself. Social conflict and change are bruising, ugly things, and in democracies they are carried on with words. That doesn't mean there aren't casualties, and it doesn't mean the right side will always win. For that reason, questions about the current state of the law shouldn't be met with trolling and condescension. If free speech cannot defend itself in free debate, then it isn't really free speech at all; it's just a fancier version of the right to smoke.

#### Speech codes demonstrate that governments are committed to the well-being of minorities. Overreach has been empirically disproven.

**Tsesis:** (Alexander Tsesis – Visiting Professor, University of Pittsburgh Law School; Visiting Assistant Professor, Chicago-Kent College of Law; Affiliated Scholar with the University of Wisconsin-Law School at the Institute for Legal Studies, “Review: The Boundaries of Free Speech: Understanding Words that Wound”, “International Context”

-Decreases state power

-International data of countries with speech codes

-Commitment to minorities

Numerous democracies have recognized the potential harms of hate speech on children and on democratic society as a whole. [n110](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true" \l "n110) In chapter 12, Delgado and Stefancic compare the United States' treatment of hate speech with the regulation of such speech in other Western societies, and they show the relatively greater acceptance of such regulation in international agreements. Germany, which is one of the countries they discuss, has several laws to prevent both the long- and short-term risks of destructive messages. Anyone attacking the human dignity of others by inciting hatred against a segment of the population, advocating the use of "violent or arbitrary measures against them," or exposing them to malicious slander is subject to imprisonment. [n111](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true" \l "n111) **Germany, further, punishes Holocaust denial and prohibits Nazi and neo-Nazi groups from using the Internet to disseminate their ideology**. [n112](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n112) Germany counterbalances the government's interest in regulating hate speech for preserving democratic institutions with an interest in protecting the free speech rights of individuals. [n113](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n113) Despite its open polity, Germany outlaws political parties that threaten democratic order**.**[**n114**](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n114)**Israel, too, has a law barring political candidates from national****[\*159] office who incite others to racism.**[**n115**](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n115)**Similarly, Canada prohibits hate speech that subverts the democratic process.**[**n116**](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n116)**British law, likewise, punishes those who incite others to racial hatred.**[**n117**](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n117)**Great Britain recognizes that tolerance of speech that calls for the abuse of racial, ethnic, and religious groups can popularize racist attitudes and increase inter-group friction.**[**n118**](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n118) **Countries that have adopted hate speech legislation show a concern for the well-being of targeted groups.** They recognize that the decision over whether to regulate speech requires governments to balance individual with social interests. Many countries that restrict hate speech, as Delgado and Stefancic point out, "believe that human rights and freedoms contain a collective, as well as an individual, dimension and that a citizen's right to promote racist views must be weighed against the interests of society." [n119](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true" \l "n119) In this regard, the Austrian Penal Code places a greater emphasis on the dignity rights of the targets than the rights of intimidating hate speakers. Section 283 of the Austrian Penal Code makes it an offence to incite hostilities against religious, racial, ethnic, or national groups and to violate "their human dignity" through slander. [n120](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true" \l "n120) Countries like Austria that have anti-hate speech laws "wish to deter the violence and fighting they believe it encourages." [n121](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true" \l "n121) Such is also the case in Hungary, where Parliament passed a law criminalizing the organizing or providing of finances for any event which may provoke violence against a national, ethnic, racial, religious, or other group, hatred or incitement against the Hungarian nation, or any national, ethnic, racial, or religious group. [n122](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true" \l "n122) On the international level, the International Covenant on Civil and Political Rights similarly enjoins signatory states to [\*160]  curb "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence." **[n123](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true" \l "n123) The experiences of western democracies who have enacted hate speech regulations indicate that a limited proscription does not erode the government's commitment to protecting****free speech and inquiry.****[n124](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true" \l "n124) Countries like England have found that hate speech regulations serve declaratory purposes because they indicate governments' commitment to the well-being of minorities.****[n125](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true" \l "n125) United States****free speech jurisprudence is anomalous. Democracies generally recognize that preserving human rights supersedes bigots' desire to spread vituperative messages. The history of racism in the United States, from Native American dislocation, to slavery, to Japanese internment, demonstrates that here in the U.S., as in other democracies, intolerance and persecution can exist alongside****free speech.** Safeguards against the real harms of hate speech can prevent the erosion of civil rights.

#### Signaling effect is a reason to vote neg – banning bad forms of speech discourages its use.

**Parekh:** Parekh, Bhikhu “Is There a Case for Banning Hate Speech?” *Cambridge University Press.* 2012.

-Most members of society law abiding

-Symbolizes state commitment to the people

**Second, a legal prohibition is valuable for the message it sends. Such a law reassures all members of society – not only the currently targeted group, but also other members of society, for every one of them can under certain circumstances be a target – that the state values them all equally and is committed to maintaining a civil public discourse and protecting their fundamental interests. So far as the currently targeted group is concerned, the law legitimizes the state in its eyes, earns its trust, and acquires the right to its loyalty. It also lays down norms of civility and sends out clear messages concerning what is or is not an acceptable way of talking about and treating other members of society. Being a collective and public statement of the community’s moral identity and guiding values, the law affirms and enforces these values, haws a symbolic and educational significance, and helps shape the collective ethos.**

#### Radical proposals, like not restricting any free speech, trade off with other rights and cede power to conservatives.

**Delgado and Stefancic:** Richard Delgado and Jean Stefancic [Delgado is Charles Inglis Thomson Professor of Law, University of Colorado. J.D., U. Cali- fornia-Berkeley, 1974. Stefancic is theTechnical Services Librarian, University of San Francisco School of Law. M.L.S., Simmons College, 1963; M.A., University of San Francisco, 1989. “FOUR OBSERVATIONS ABOUT HATE SPEECH.” *Wake Forest Law Review.* Volume 44. 2009. RP

-Focus disad – looking to free speech means we ignore conservative overreach

-Absolutionist nature of the Aff erodes Democratic power

Our first observation concerns not so much the merits of the two positions as the nature of the pitched battle that is taking place. **Each of the controversies mentioned earlier features a progressive organization trying to impose its view on another of the same or very similar stripe. With hate speech, for example, the ACLU, FIRE, and other progressive organizations clash with campus authorities and activists of color over the legitimacy of controlling that form of expression**. In the simplest terms, First Amendment defenders maintain that campus speech should be free, while their adversaries insist that the campus should be free—but of racism. Their dispute features contrasting views about how to frame the central issue, the governing narrative, controlling case law, and the lessons of history. As we have noted, free-speech defenders invoke case law such as Brandenburg v. Ohio32 and New York Times Co. v. Sullivan33 that has decisively expanded the scope of free speech. These advocates invoke a particular kind of story, or narrative, as well. For them, defense of campus speech is part of a history that includes the struggle of Western society to rise above superstition and enforced orthodoxy.34 They cite heroes, such as Socrates, Galileo, and Peter Zenger, who put their bodies on the line to expand free expression, and writers such as John Locke, David Hume, Thomas Hobbes, and Voltaire, who placed it on a firm theoretical foundation.The equality faction approaches the problem from a different perspective. For them, defending racial and sexual minorities from hateful invective is an essential feature of safeguarding equal protection and equal dignity or, in the case of university administrators, a healthy environment for learning.36 This group, too, has its favorite cases, but they are ones like Brown v. Board of Education37 that emphasize the role of equality in education and other areas of life.38 Like their counterparts on the other side, they invoke stories that lie close to America’s core, including those of civil rights heroes like Medgar Evers, Rosa Parks, and Cesar Chavez, who fought to expand the rights of all citizens. They call upon different theorists, including Charles Lawrence and Catharine MacKinnon, who propose frameworks for limiting hateful expression. They cite the example of many Western democracies that have done just that. We mention the above not to highlight the indeterminacy of the debate or the way in which one can cite constitutional values on either side. We have done this elsewhere and believe that the party of multiculturalism has the better argument. Instead, we mention it to point out a feature that ought to have been obvious all along, but that we and most other commentators seem to have missed—namely, how the debate proceeds almost entirely between two groups of the progressive left: the ACLU and its followers, on the one hand, and minority groups, critical race theorists, and their allies on the other. **The struggle, in short, proceeds between two sets of progressive activists who, in most respects, see the world in very similar terms, consuming attention and energy at the very time when the political right—which holds little affection for either of them—has been registering large gains**. **For example, while the ACLU has been laboring to convince minorities of the error of their ways, conservative power has been rolling back the right of privacy by opening citizens’ library records to official prying and insisting on the right to snoop on e-mail and telephone exchanges**. At the same time, conservatives in government have carved out a broad sphere of governmental secrecy, greatly limiting the public’s access to information.49 These are, of course, areas close to a civil libertarian’s heart. By the same token, scholars like those writing for this symposium have been trying to convince the free-speech advocates of the error of their ways, while conservative judges and administrators have been steadily dismantling programs that lie close to the heart of civil rights advocates, including affirmative action, bilingual education, and the rights of immigrants.52 These same conservative judges and administrators have also been weakening courts’ abilities to redress racial discrimination through judicially created intent requirements, strict chains of causation, and limitations on who may sue and when.Two groups of moderate leftists have thus been energetically clashing while conservatives have been making steady inroads into programs both sets of leftists hold dear. This reality suggests that moderate leftists might wish to find some common ground and turn their attention to what their adversaries have been achieving at their expense. **One could analogize the situation to one in which two dogs, one slightly larger than the other, are carrying on a ferocious snarl-fest in the middle of the street, feinting and lunging, making a tremendous racket, blissfully unaware that the dog catchers are coming to take them to the municipal shelter where they will be euthanized ten days late**r.54 It is possible that with a new administration, the conservative assault on civil liberties and civil rights will ease somewhat. But historical forces such as the war on terror55 and the new color-blind approach to race relations56 are likely to generate continuing pressure on the progressive agenda regardless of who is in power in Washington. The hate-speech adversaries (and we do not exclude ourselves) need to ponder the expenditure of energy that they have been making and whether a détente of some sort is in order.57

#### Psychological evidence shows hate speech damages people permanently and is WORSE THAN PHYSICAL HARM– it needs to be banned

**Rosenbaum:** Rosenbaum, Thane [Contributor, The Daily Beast] “Should Neo-Nazis Be Allowed Free Speech?” *The Daily Beast.* January 2014. RP

-Emotional damage > physical damage on longevity

-Answers counterspeech and underground – people experience verbal abuse more

While what is happening in France and Israel is wholly foreign to Americans, perhaps it’s time to consider whether these and other countries may be right. **Perhaps America’s fixation on free speech has gone too far. Actually, the United States is an outlier among democracies in granting such generous free speech guarantees.** Six European countries, along with Brazil, prohibit the use of Nazi symbols and flags. Many more countries have outlawed Holocaust denial. Indeed, even encouraging racial discrimination in France is a crime. In pluralistic nations like these with clashing cultures and historical tragedies not shared by all, mutual respect and civility helps keep the peace and avoids unnecessary mental trauma. **Yet, even in the United States, free speech is not unlimited. Certain proscribed categories have always existed—libel, slander and defamation, obscenity, “fighting words,” and the “incitement of imminent lawlessness”—where the First Amendment does not protect the speaker, where the right to speak is curtailed for reasons of general welfare and public safety**. There is no freedom to shout “fire” in a crowded theater. Hate crime statutes exist in many jurisdictions where bias-motivated crimes are given more severe penalties. In 2003, the Supreme Court held that speech intended to intimidate, such as cross burning, might not receive First Amendment protection. Yet, the confusion is that in placing limits on speech we privilege physical over emotional harm. Indeed, we have an entire legal system, and an attitude toward speech, that takes its cue from a nursery rhyme: “Stick and stones can break my bones but names can never hurt me.” All of us know, however, and despite what we tell our children, names do, indeed, hurt. **And recent studies in universities such as Purdue, UCLA, Michigan, Toronto, Arizona, Maryland, and Macquarie University in New South Wales, show, among other things, through brain scans and controlled studies with participants who were subjected to both physical and emotional pain, that emotional harm is equal in intensity to that experienced by the body, and is even more long-lasting and traumatic. Physical pain subsides; emotional pain, when recalled, is relived. Pain has a shared circuitry in the human brain, and it makes no distinction between being hit in the face and losing face (or having a broken heart) as a result of bereavement, betrayal, social exclusion and grave insult. Emotional distress can, in fact, make the body sick. Indeed, research has shown that pain relief medication can work equally well for both physical and emotional injury. We impose speed limits on driving and regulate food and drugs because we know that the costs of not doing so can lead to accidents and harm. Why should speech be exempt from public welfare concerns when its social costs can be even more injurious? In the marketplace of ideas, there is a difference between trying to persuade and trying to injure.** One can object to gays in the military without ruining the one moment a father has to bury his son; neo-Nazis can long for the Third Reich without re-traumatizing Hitler’s victims; one can oppose Affirmative Action without burning a cross on an African-American’s lawn. Of course, everything is a matter of degree. Juries are faced with similar ambiguities when it comes to physical injury. No one knows for certain whether the plaintiff wearing a neck brace can’t actually run the New York Marathon. We tolerate the fake slip and fall, but we feel absolutely helpless in evaluating whether words and gestures intended to harm actually do cause harm. Jurors are as capable of working through these uncertainties in the area of emotional harms as they are in the realm of physical injury.Free speech should not stand in the way of common decency. **No right should be so freely and recklessly exercised that it becomes an impediment to civil society, making it so that others are made to feel less free, their private space and peace invaded, their sensitivities cruelly trampled upon.**

#### Free speech is a construct created by whites to cement their privilege – it excuses racialized violence and aids Trumpian bigots

**Ceballos:** Ceballos, Cassandra [Writer, The Collegian.] “Opinion: Trump exemplifies why speech isn't really free. How Trump's rhetoric reflect white power.” *The Collegian.* September 2016. RP

-Accessibility; only some can access free speech

-Distracts from a structural critique of race relations

Some days I feel very lucky to be a Spider, given the difficult road I continue to navigate as a first-generation college student. But on other days, I’m caught off guard by the hatred and bigotry in this world, this country and apparently this campus. I no longer feel very lucky or even human. On these days, I do not intentionally wake up feeling targeted or hated. That is until an article, overheard conversation or poster freezes me. Abruptly, I’m no Spider, I am an “other.” The causes have nuances, but my reaction is routine: brain on overdrive and an instant need to distance myself, mentally and physically, from the sudden reality of my insignificance. This reaction happened to me walking through Spiderfest weeks ago as I headed to work. The merry sounds of chatter, music and Spider solidarity washed over me as I strolled through the tables, but the illusion of safety shattered as I witnessed something I was not prepared to see. The College Republicans brought a table to Spiderfest complete with “Trump/Pence” posters and paraphernalia. I don’t know why I was so surprised, so caught off guard. **Despite effort at every level of the university to promote an inclusive, diverse and accepting environment, it is well-known that some on this campus readily silence the voice of their peers, exposing themselves with op-ed pieces about Donald Trump or safe spaces. The ultimate irony of the ideology is they feel it is their speech that is being attacked, their rights being pushed to the wayside for the sake of "feelings." Much of Trump rhetoric indulges this view of free speech, positing that** people say and do as they feel, no matter whom it targets and to hell with the externalized consequences. **Here’s the problem: his rhetoric, the rhetoric of his supporters, the rhetoric of the above pieces and Hillary Clinton’s hispandering silence not only the voice of citizens, but erase entire narratives and ensures speech from the "other" never materializes. White supremacy, intimately entwined with Trumpism, fundamentally maintains the status quo of which speech is free and for whom. I challenge you to reconceive the notion of "free speech.**" Consider the field surrounding its invocation. **With cursory examination, history speaks for itself: free speech is a myth, concocted by and for the powerful while they simultaneously annihilated, enslaved and colonized a majority of the world’s population for centuries. How dare we debate degrees of freedom of speech in a land methodically fashioned to never be free for all but only free for some?** The "other" may change, but power remains shockingly static. **Trump’s version of free speech basically demands the right to vocally strip individuals of their humanity**. His minions prove this, assaulting silent protestors at his rallies with jeering support from the King Clown himself. **Trumpism promotes forcefully removing someone from an airplane for speaking Arabic, gets bullets fired at Mosques, citizens assaulted in grocery stores or on sidewalks. It bombed a church in Birmingham, got Dylann Roof a Big Mac after he murdered nine people and gave Philando Castille four bullets and a fatherless daughter after he complied with a police officer.** While pro-Trump Spiders may not get physical, please understand that silent support of the entity that encourages such behavior is in itself a violent act, impugning on vitality. For the protected, whose rhetoric and ideology Trumpism does not explicitly target, Trump can be isolated as a presidential candidate, albeit a very poor and obviously dangerous one. His nonsensical spouting about terrorism, outsourcing and immigrants are weakly constructed, lacking any intelligent or factual basis, rife with discrepancies and simplistic language meant to mask the fact that he actually has no idea what he is talking about. To the ‘other’, including myself, he is not just a presidential candidate but an embodiment of everything that keeps us powerless and vulnerable. Trumpism mandates that we actively participate in our oppression, absorbing the externalized consequences. Those protected observe and superficially worry, yet silently condone while we walk this country and campus with nebulous trepidation. At any moment, someone may come along and pick an "other" out of today’s diverse United States. At any moment, at Martin’s grocery shopping, walking around the city or to class, someone may assert, “Hey. You don’t belong here. I want you gone from this place and this country. This is MY America.” It might be loudly, openly, with a vocal or physical violation: a shove or hateful word, inviting others to join in on the erasure of this now-spotlighted human. Or it might be quiet, invisible and unsuspecting, with a slight smirk and thumbs up gesture next to Trump’s name as a symbol of support.

#### Black students want university speech codes

**Jackson:** Jackson, Symone [Contributor, Fusion] “5 Things Black Students Say Will End Racism On Campuses.” *Fusion.* April 2016. RP

-Survey of multiple colleges

-Want university condemnation of hate

As a recent grad who is still involved in campus activism, I know that students are doing some really amazing work and I want people to listen to what they’re saying. **So I spoke to leaders from several black student organizations in California and asked them what they’d like to see implemented. This is what they said: Schools should never tolerate harassment of students based on ethnicity, religion or gender, but as we saw in the ‘not guilty’ verdict in the case at SJSU, that isn’t always the case. At SJSU, the black student organization called BUG (Black Unity Group) has publicly demanded that SJSU adopt a zero-tolerance policy in cases of racial harassment, in response to the bicycle U-lock incident. “Black students would feel [safer] knowing that there is a standard policy set forth by the university,” said Brianna Leon, a student at SJSU who is an active member of BUG. “A lot of times students are passive and they don’t say anything. If the university made them aware of the policy, people would be more likely to come forward.”**

#### Bans on hate speech have a positive spillover – they lead to other policies eradicating discrimination.

**Parekh:** Parekh, Bhikhu “Is There a Case for Banning Hate Speech?” *Cambridge University Press.* 2012.

-Study of Europe

-Bans not isolated – caused educational campaigns too

**It is sometimes argued that a ban on hate speech can easily become an end it itself and an excuse to avoid well-conceived antidiscrimination policies**. Although this can happen, as arguably it has in France, there is no obvious reason why it should. **As the cases of Britain, Netherlands, Germany, and Australia show, the ban on hate speech has gone hand in hand with a wider campaign to address the causes of racism, sexism, or homophobia by pressing for a well-worked-out strategy to tackle discrimination and disadvantage. This is not accidental and has a complex internal logic. Once people realize that ban on hate speech has made only a marginal difference in their lives, they look for the deeper causes and see the need for an antidiscrimination struggle in other areas of life. The ban on hate speech alerts the target groups to other goals to aim at and gives it the confidence to fight for them by actively participating in public life.**

#### Europe proves that bans on hate prevent *mobilization* of oppressive groups

**Parekh:** Parekh, Bhikhu “Is There a Case for Banning Hate Speech?” *Cambridge University Press.* 2012.

-Hate speech makes groups more powerful and lets them spread

-Normalizes violence

**Third, proscription of hate speech plays an important role in preventing political mobilization of hostility against particular groups. This is especially true if the limits are enacted before hate-based organizations have built up powerful networks and support and before their rhetoric has coarsened public sensibility**. As I argued earlier, a climate of intimidation and violence against identified groups develops over time. **Once it takes deep roots and poisons the relations between different groups, law lacks a supportive public opinion and is either not enacted or not enforced or takes a drastic form and risks provoking widespread resistance. In the developing societies, and even in such mature democracies as Britain, France, Germany, and the Netherlands, it is common for politicians and political parties to outbid each other by pandering to base political instincts and provoking hatred of whatever group appears to arouse popular dislike. Banning hate speech discourages them from doing so and inflaming the all-too-easily aroused passions in pursuit of short term gains. Although other factors played a part as well, it is worth noting that British elections, their media coverage, and political discourse in general have been healthier and more moderate as a result of the law proscribing incitement to racial hatred. Similar things have happened in India, Germany, Austria, the Netherlands, South Africa, and elsewhere, in all of which crude expressions of racial nad religious hatred have declined in recent years.** This is not to say, of course, that these sentiments have disappeared or even substantially declined in these countries, but rather that public life is conducted in a more civil language and that politicians appealing to such sentiments are generally treated with disdain by the general public and disowned by their leaders.

#### The First Amendment is racist and used to justify acts of terror on the Black community.

**NCHRE:**"First Amendment and Racial Terrorism." National Center for Human Rights Education.

U.S. **courts consistently fail to acknowledge that the purpose of racist speech is to continue the subordination of one people by another. This leads to a legalistic distinction between acts that constitute racial terrorism and the words and ideas that motivate the attackers**. In our country, acts — assault, battery, vandalism, arson, murder, lynchings, physical harassment — are punishable under our court system. **But words — like nigger — or symbols — such as Nazi swastikas or burning crosses -- are protected by the courts as acts of individual expression. To protect the status quo of white domination, our legal justice system first formally excluded African Americans from equality, and it now stands passively aside while private actors do the dirty work of legitimating social inequality and silencing victims.** U.S. courts have not always privileged white racists to express themselves at the expense of the safety of African Americans and other people of color. A pertinent Supreme Court case was decided in 1952 after two race riots in Illinois in which more than one hundred men, women and children were killed, forcing another 6,000 African Americans to flee the state. In that case, Beauharnais v. Illinois, the head of the White Circle League distributed a leaflet declaring that African Americans would terrorize white neighborhoods with "rapes, robberies, knives, guns and marijuana." The pamphleteer was convicted when the court decided that libelous statements aimed at groups of people, like those aimed at individuals, fall outside First Amendment protection. While it was certainly a victory for the anti-racist movement, this decision did not go far enough in banning the activities of racist individuals, largely because the government was not yet ready to outlaw its own racist policies. The Brown v. Board of Education school desegregation decision occurred two years later in 1954. **On the other hand, the current Supreme Court is dominated by the right wing. Its interpretations disconnect racial terrorism from the harm inflicted on victims. In 1992, the court decided in R.A.V. vs. St. Paul that a cross burned in the front yard of an African American family by white teenagers was a form of protected symbolic speech. This decision effectively trumped the family’s right to live in their home free from racial terrorism. Using the artificial distinction between speech and action, the Court decided that the act of burning a cross to intimidate a black family was equivalent to freedom of speech.**

#### Black students want bans on hate speech

Knight Foundation 16 [Knight Foundation has established endowed chairs in journalism at top universities nationwide. The chairs are leading journalists who take positions as tenured professors within academia. They practice journalism, teach innovative classes, and create experimental projects and new programs that help lead journalism excellence in the digital age.], 09-22-2016, "HISTORICALLY BLACK COLLEGE AND UNIVERSITY STUDENTS’ VIEWS OF FREE EXPRESSION ON CAMPUS" <http://www.knightfoundation.org/reports/hbcu-free-speech-campus> DOA: 01/03/16

**Students who attend** historically black colleges and universities (**HBCUs**) in the United States are confident that First Amendment rights are secure, but **are more likely** than other college students **to favor limits on First Amendment press freedoms during campus protests**, a Gallup report has found. The report, sponsored by the John S. and James L. Knight Foundation and the Newseum Institute, is a follow-up to an April survey of 3,072 U.S. college students (including HBCU students) on their views of First Amendment rights. **The new report compares findings from the national sample with responses from 302 full-time students at HBCUs, as well as 357 black students at other colleges.** **The report shows** that while a large majority (75 percent) of HBCU students view freedom of the press as secure, **56 percent** – double the percentage of national college students at 28 percent – **believe college students should be able to prevent reporters from covering campus protests. Correspondingly**, **HBCU students express less trust in the media** than the national sample. **This study sought to** better **understand how** U.S. **college students interpret their First Amendment rights**, and the role that their environments and backgrounds play in shaping their views. Florida Agricultural and Mechanical University (FAMU) will host a student panel discussion today on “Free Speech on HBCU Campuses” to discuss the findings of the report. “Amid intense debates around free speech on campus, these findings highlight a deeper story behind student perceptions of the First Amendment. They have the potential to help fuel a more informed debate around these important rights and open new avenues for further study,” said Sam Gill, Knight Foundation vice president for learning and impact.

#### Free speech is an illusion – minority voices will never be heard and are silenced, while exceptions to the First Amendment give the white majority a bully pulpit to exert dominance.

**Delgado and Stefancic:** Richard Delgado and Jean Stefancic [Delgado is Charles Inglis Thomson Professor of Law, University of Colorado. J.D., U. Cali- fornia-Berkeley, 1974. Stefancic is theTechnical Services Librarian, University of San Francisco School of Law. M.L.S., Simmons College, 1963; M.A., University of San Francisco, 1989.] “Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills.” *Cornell Law Review.* Volume 77. September 1992. RP

-Whites have equivalent of speech codes always – property interests

-Law not neutral – protects whites no matter what

-People will ignore black voices

**Speech and free expression are not only poorly adapted to rem- edy racism, they often make matters worse-far from being stalwart friends, they can impede the cause of racial reform**. First, they en- courage writers, filmmakers, and other creative people to feel amoral, nonresponsible in what they do. 18 8 Because there is a mar- ketplace of ideas, the rationalization goes, another film-maker is free to make an antiracist movie that will cancel out any minor stereotyp- ing in the one I am making. My movie may have other redeeming qualities; besides, it is good entertainment and everyone in the in- dustry uses stock characters like the black maid or the bumbling Asian tourist. How can one create film without stock characters? 18 9 Second, when insurgent groups attempt to use speech as an in- strument of reform, courts almost invariably construe First Amend- ment doctrine against them.1 90 As Charles Lawrence pointed out, **civil rights activists in the sixties made the greatest strides when they acted in defiance of the First Amendment as then understood.**191 They marched, were arrested and convicted; sat in, were arrested and convicted; distributed leaflets, were arrested and convicted. Many years later, after much gallant lawyering and the expenditure of untold hours of effort, the conviction might be reversed on ap- peal if the original action had been sufficiently prayerful, mannerly, and not too interlaced with an action component. This history of the civil rights movement does not bear out the usual assumption that the First Amendment is of great value for racial reformers. 19 2 Current First Amendment law is similarly skewed. **Examination of the many "exceptions" to First Amendment protection discloses that the large majority favor the interests of the powerful**. 19 3 **If one says something disparaging of a wealthy and well-regarded individ- ual, one discovers that one's words were not free after all; the wealthy individual has a type of property interest in his or her com- munity image, damage to which is compensable even though words were the sole instrument of the harm.** Similarly, if one infringes the copyright or trademark of a well-known writer or industrialist, again it turns out that one's action is punishable. 19 5 Further, if one disseminates an official secret valuable to a powerful branch of the military or defense contractor, that speech is punishable. 19 If one speaks disrespectfully to ajudge, police officer, teacher, military offi- cial, or other powerful authority figure, again one discovers that one's words were not free;1 9 7 and so with words used to defraud, 198 form a conspiracy, 199 breach the peace,200 or untruthful words given under oath during a civil or criminal proceeding.20 1 Yet the suggestion that we create new exception to protect lowly and vulnerable members of our society, such as isolated, young black undergraduates attending dominantly white campuses, is often met with consternation: the First Amendment must be a seamless web; minorities, ifthey knew their own self-interest, should appreciate this even more than others. 20 2 **This one-sidedness of free-speech doctrine makes the First Amendment much more valua- ble to the majority than to the minority. The system of free expression also has a powerful after-the-fact apologetic function.** Elite groups use the supposed existence of a marketplace of ideas to justify their own superior position.203 Imag- ine a society in which all As were rich and happy, all Bs were moder- ately comfortable, and all Cs were poor, stigmatized, and reviled. Imagine also that this society scrupulously believes in a free market- place of ideas. Might not the As benefit greatly from such a system? On looking about them and observing the inequality in the distribu- tion of wealth, longevity, happiness, and safety between themselves and the others, they might feel guilt. Perhaps their own superior position is undeserved, or at least requires explanation. But the existence of an ostensibly free marketplace of ideas renders that ef- fort unnecessary. Rationalization is easy: our ideas, our culture competed with their more easygoing ones and won.20 4 It was a fair fight. Our position must be deserved; the distribution of social goods must be roughly what fairness, merit, and equity call for.20 5 It is up to them to change, not us. A free market ofracial depiction resists change for two final rea- sons. First, the dominant pictures, images, narratives, plots, roles, and stories ascribed to, and constituting the public perception of minorities, are always dominantly negative. 20 6 Through an unfortu- nate psychological mechanism, incessant bombardment by images of the sort described in Part I (as well as today's versions) inscribe those negative images on the souls and minds of minority per- sons. 20 7 Minorities internalize the stories they read, see, and hear every day. Persons of color can easily become demoralized, blame themselves,andnotspeakupvigorously.208 **The expense of speech also precludes the stigmatized from participating effectively in the marketplace of ideas**. 20 9 They are often poor-indeed, one theory of racism holds that maintenance of economic inequality is its prime function2 0 -and hence unlikely to command the means to bring countervailing messages to the eyes and ears of others. Second, even when minorities do speak they have little credibil- ity. **Who would listen to, who would credit, a speaker or writer one associates with watermelon-eating, buffoonery, menial work, intel- lectual inadequacy, laziness, lasciviousness, and demanding re- sources beyond his or her deserved share?** Our very imagery of the outsider shows that, contrary to the usual view, society does not really want them to speak out effectively in their own behalf and, in fact, cannot visualize them doing so. Ask yourself: How do outsiders speak in the dominant narratives? Poorly, inarticulately, with broken syntax, short sentences, grunts, and unsophisticated ideas.21' Try to recall a single popular narrative of an eloquent, self-assured black (for example) orator or speaker. In the real world, of course, they exist in profusion. But when we stumble upon them, we are surprised: "What a welcome 'exception'!" Words, then, can wound. But the fine thing about the current situation is that one gets to enjoy a superior position and feel virtu- ous at the same time. By supporting the system of free expression no matter what the cost, one is upholding principle. One can be- long to impeccably liberal organizations and believe one is doing the right thing, even while taking actions that are demonstrably inju- rious to the least privileged, most defenseless segments of our soci- ety.212 In time, one's actions will seem wrong and will be condemned as such, but paradigms change slowly.2 1 3 **The world one helps to create-a world in which denigrating depiction is good or at least acceptable, in which minorities are buffoons, clowns, maids, or Willie Hortons, and only rarely fully individuated human beings with sensitivities, talents, personalities, and frailties-will survive into the future**. One gets to create culture at outsiders' ex- pense. And, one gets to sleep well at night, too. Racism is not a mistake, not a matter of episodic, irrational be- havior carried out by vicious-willed individuals, not a throwback to a long-gone era. It is ritual assertion of supremacy, 214 like animals sneering and posturing to maintain their places in the hierarchy of the colony. It is performed largely unconsciously, just as the ani- mals' behavior is. 2 15 Racism seems right, customary, and inoffensive to those engaged in it, while bringing psychic and pecuniary advan- tages.21 **6 The notion that more speech, more talking, more preach- ing, and more lecturing can counter this system of oppression is appealing, lofty, romantic-and wrong.**

#### Free speech can be invoked at any time to avoid discussion or culpability for racism and shift blame onto minorities instead

**Cobb:** Cobb, Jelani [Writer, The New Yorker] “RACE AND THE FREE-SPEECH DIVERSION.” *The New Yorker.* November 2015. RP

-Excuse of free speech to stymie protests

-Can accuse others of violating their free speech

**Of the many concerns unearthed by the protests at two major universities this week, the velocity at which we now move from racial recrimination to self- righteous backlash is possibly the most revealing**. The unrest that occurred at the University of Missouri and at Yale University, two outwardly dissimilar institutions, shared themes of racial obtuseness, arthritic institutional responses to it, and the feeling, among students of color, that they are tenants rather than stakeholders in their universities. **That these issues have now been subsumed in a debate over political correctness and free speech on campus—important but largely separate subjects—is proof of the self-serving deflection to which we should be accustomed at this point. Two weeks ago, we saw a school security officer in South Carolina violently subdue a teen-age girl for simple noncompliance, and we actually countenanced discussion of the student’s culpability for “being disruptive in class.” The default for avoiding discussion of racism is to invoke a separate principle, one with which few would disagree in the abstract—free speech, respectful participation in class—as the counterpoint to the violation of principles relating to civil rights.** This is victim-blaming with a software update, with less interest in the kind of character assassination we saw deployed against Trayvon Martin and Michael Brown than in creating a seemingly right-minded position that serves the same effect.

#### The First Amendment and free speech has historically stymied racial progress.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “Pressure Valves and Blooded Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulations.” *California Law Review.* Volume 84. July 1994. RP

-State will find some way to shut down protests

-Can say that protests violate the free speech of others

**Many absolutists and defenders of the First Amendment urge that the First Amendment historically has been a great friend and ally of social reformers. Nadine Strossen, for example, argues that without free speech, Martin Luther King, Jr. could not have moved the American public as he did**. 8 Other reform movements also are said to have relied heavily on free speech.6 9 **This argument, like the two earlier ones, is paternalistic-it is based on the supposed best interest of minorities. If they understood their own best interest, the argument goes, they would not demand to bridle speech. The argument ignores the history of the relationship between racial minorities and the First Amendment. In fact, minorities have made the greatest progress when they acted in defiance of the First Amendment. The original Constitution protected slavery in several of its provisions, and the First Amendment existed contemporaneously with slavery for nearly 100 years. Free speech for slaves, women, and the propertyless was simply not a major concern for the drafters**, who appear to have conceived the First Amendment mainly as protection for the kind of refined political, scientific, and artistic discourse they and their class enjoyed. Later, of course, abolitionism and civil rights activism broke out. **But an examination of the role of speech in reform movements shows that the relationship of the First Amendment to social advance is not so simple as free speech absolutists maintain. In the civil rights movement of the 1960s, for example, Martin Luther King, Jr. and others did use speeches and other symbolic acts to kindle America's conscience.73 But as often as not, they found the First Amendment (as then understood) did not protect them**.7 4 **They rallied and were arrested and convicted; sat in, were arrested and convicted; marched, sang, and spoke and were arrested and convicted.75 Their speech was seen as too forceful, too disruptive.** Many years later, to be sure, their convictions would sometimes be reversed on appeal, at the cost of thousands of dollars and much gallant lawyering. **But the First Amendment, as then understood, served more as an obstacle than a friend**.76

#### Campus free speech is used blame student activists and *prevent structural action* against racism

**Cornett:** Cornett, Sarah [Sarah Cornett is a senior at Whitman College, and the editor of the student-run weekly newspaper, The Pioneer] “Racism on Campus - Not Free Speech - Is the Real Story: Mainstream Media Are Missing the Mark.” *Truthout.* December 2015. RP

-Distracts away from other issues – not about free speech but black activism

**Of all the images that accompanied articles on the recent protests against systemic racism at the University of Missouri, a screenshot of a professor shouting at a student photojournalist somehow became one of the most prevalent**. "I need some muscle over here," said Melissa Click, an assistant professor of communications at Missouri, attempting to grab his camera "Help me get this reporter out of here." Anyone following events at the university has likely read this quote many times over. As the clip gained traction on social media, national news organizations began to pay attention. The New York Times ran an article describing the incident on its website's home page. The Atlantic, now infamous for its articles lambasting college students for being "hypersensitive," followed up with a piece by Conor Friedersdorf calling Click's outburst an example of the problem with the idea of "safe space." Part of the media obsession with Click clearly had to do with the nature of the subject itself: threats to journalists tend to draw the attention of journalists. But looking at student accounts from that week show that the story was about much more than a confrontation between protesters and a photographer. **The incident became a media distraction from the real issues - direct threats to students, and the complicity of faculty and school officials in them. As part of the free speech backlash, some journalists took it upon themselves to educate student protesters on how to be proper activists**. "To truly demonstrate self-determination, activists would do well to also learn how to use the media to amplify their story," wrote Deborah Douglas and Afi-Odelia Scruggs in the Columbia Journalism Review. **Journalists effectively turned the spotlight on themselves and used protest movements led by Black students against systemic racism and violence as a platform for their own voices**. The sophisticated organizing and concrete successes of these movements - the University of Missouri system president resigned within days, after all - were ignored. Instead, student activists were told they need a lesson in working with media. "Here was an activist group that needed us to get their message out and they were trying to shut us down," Brian Kratzer, a journalist reporting on the events for the Columbia Missourian, told NPR "Maybe they didn't understand how public spaces work." **The focus on free speech offered an easy critique of student activists.** An important but abstract principle was elevated to become the crux of the story. This strategy is one that New Yorker writer Jelani Cobb called that week "victim-blaming with a software update." **The First Amendment narrative has allowed the media to disregard daily threats students of color are calling attention to at Missouri, Yale and dozens of other campuses. "To understand the real complexities of these students' situation," Cobb wrote, "free- speech purists would have to grapple with what it means to live in a building named for a man who dedicated himself to the principle of white supremacy and to the ownership of your ancestors**." Cobb was referring to Yale, where students have been fighting to change the name of Calhoun College, named after the Confederate general**. In stories on the Yale protests, reporters honed in on a video of a student confronting a residential college master over an email as further evidence of a supposed threat to free speech. But the reasons for students' mobilization - racialized harassment and administrative complicity in it - were repeatedly ignored.** Junior Briana Burroughs called attention to the deeply unsafe campus culture students continue to fight against when she described ways she'd been verbally and physically harassed at fraternity parties. "Fear paralyzed me as their discussions of my Black body and hair turned into taunts and fondling. Every incident included jeering and pointing, and some included spanking and screaming," wrote Burroughs in the Yale Daily News. "Most, however, went unnoticed." As Yale senior Aaron Lewis pointed out on Medium, media discussion of campus activism created a split dynamic: **A free-speech focus obscures the pressing problem of racism on campus. "People have lost sight of the larger issue: systemic racism on campus**," Lewis wrote. **The loss of focus on systemic racism that Lewis mentioned has become especially evident as free speech has been intellectualized as the problem of the "new student activism,"** and liberal college campuses. This came into focus at Yale when Erika Christakis, a live-in administrator at one of the residential colleges, questioned administrative cautioning against culturally appropriative Halloween costumes. "American universities were once a safe space not only for maturation but also for a certain regressive, or even transgressive, experience," she wrote in an email to students "Increasingly, it seems they have become places of censure and prohibition." Christakis pointed to the tired argument that US college students are creating environments of liberal intolerance through the tyranny of "safe spaces" and trigger warnings. In doing so, she negated the real threats cultural appropriation can cause to students of color. Should students really be required to educate their peers on the inappropriateness of wearing a feather headdress or blackface? **Colleges are expected to address overt threats to the mental and physical health of their students.** At the New Republic, Roxane Gay questioned whether those who make statements like Christakis' would believe that racism fell into this category. "Christakis suggests we take our arguments out of their real-world context - eliding real people in the process - and instead move them into the realm of the theoretical, where no one can feel hurt," she wrote. The tendency to intellectualize these situations distracts from the severity of racism and harassment and the threats to students' safety that are all too real. Students like Lewis, the Yale senior, make clear they don't see free speech principles as incompatible with fighting administrative complicity in racial injustice. But in working toward a clearer understanding of the climates these students are resisting, the polarization fostered by many media accounts made this work harder. "There's absolutely no reason we can't acknowledge both the value of free speech and the reality of the prejudice that students of color face everyday," wrote Lewis. "It saddens me that this has gotten to the point where people feel like they have to take sides." Since the week of November 9, media focus has shifted. International attacks by ISIS and the mass shootings in California and Colorado have rightfully commanded headlines in the past two weeks. However, looking back to that week - when media attention was very much focused on college protests against racism and this question of free speech - tells us much about how most news organizations think about student activists. As protests continue on campuses nationwide, Mrinal Kumar, a Yale Daily News columnist, called attention to the real power that students, undeterred by critical media attention, have in creating real change. "The last two weeks have proven that we have the power to incite change not only at Yale but also on campuses across the nation," Kumar said. "But we can't afford to stop there."

#### Failure to outlaw hate speech works *against* activism—it’s complicity and racism and expresses that racist speech is supported.

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

-Won’t speak up if they face hate – would just stay home

-Signaling effect is key

**Further, the law's failure to provide recourse to persons who are demeaned by the hate messages is an effective second injury to that perso**n.288 **The second injury is the pain of knowing that the government provides no remedy, and offers no recognition of the dehumanizing experience that victims of hate propaganda are subjected to**.289 The government's denial of personhood by denying legal recourse may be even more painful than the initial act of hatred. One can dismiss the hate group as an organization of marginal people, but the state is the official embodiment of the society we live in. The legal realists and their progeny recognize that law formation is largely a matter of value.290 There are no inevitable results; there is no controlling logic or doctrine that can make the hard choices for us. **Reversion to discredited doctrinal absolutism carries a strong implica- tion that racist activities are supported, albeit unintentionally, by the law. In a society that expresses its moral judgments through the law, and in which the rule of law and the use of law are characteristic responses to many social phenomena,** this absence of laws against racist speech is telling.

#### Free speech on campus allows racists to mirror historical patterns of lynching and assault on Blacks across the US.

**Ross:** Ross, Lawrence [Lawrence Ross is the author of the Los Angeles Times best-seller The Divine Nine: The History of African American Fraternities and Sororities. His newest book, Blackballed: The Black and White Politics of Race on America’s Campuses, is a blunt and frank look at the historical and contemporary issue of campus racism on predominantly white college campuses.] “Blackface on Halloween Isn’t About Freedom of Speech, It’s About White Supremacy.” *The Root.* October 2016. RP

**It’s Halloween, so put on your seat belts, brothers and sisters, and get ready for an onslaught of racist Halloween costumes coming from white college students who think your humanity is fair game for chuckles. The blackface paint will flow as white students think that smearing it on, along with a sign that says, “Black Lives Matter,” is the most *hilarious* thing they can do. And when they get caught, and suspended by their universities, they’ll all proclaim, “I had no idea it was racist!”** Don’t be bamboozled, my friends. Y**ou see, blackface on white college students is as much white supremacy standard operating procedure at Halloween as a Donald Trump fanatic yelling, “Lock her up!”** When I was writing my book about campus racism, *Blackballed: The Black and White Politics of Race on America’s Campuses,* **I was able to hit the archives of hundreds of predominantly white colleges and universities, and I found that there have been white students as early as the 1840s, and continuing through the 20th century until today, who have made it a point to use blackface to denigrate African Americans**. Within predominantly white fraternities and sororities, hosting racist theme parties, where white students dress like stereotypical blacks, Latinos and Asians, happens every Halloween, even as universities make concerted e orts to educate these students about why they shouldn’t do it. **And yet, as the offensive depictions of minorities flow from Instagram, Snapchat and other social media platforms, there will be those who rise up and shout, “It’s all about freedom of speech and the First Amendment,”** as though the Bill of Rights were a “Get Out of Racism” card to be played. What’s ironic is that while these people will bend over backward to note that racists (and that’s what I call any white college student who puts on blackface. Don’t like that tag? Don’t put on blackface) have the constitutional right to o end, they’re typically silent as a church mouse when it comes to people of color exercising their own freedom of speech. **The hypocrisy of Americanism means that a Colin Kaepernick, who kneels before the flag as a challenge to America to be better, to be more just, is held up as a point of ridicule, whereas the racist just melts back into society. And we see it today. At the University of Wisconsin-Madison, someone decided that he’d dress up as President Barack Obama in a prison uniform with a noose hanging around his neck. The idea? Lynch the first African-American president.** It’s the most common, almost clichéd exhibition of white supremacy on college campuses. Remember that two Sigma Alpha Epsilon fraternity members at the University of Oklahoma sang about lynching African Americans before letting them into their fraternity; and the James Meredith statue at the University of Mississippi is regularly targeted with nooses. **But what’s disturbing about the University of Wisconsin picture isn’t just that some racist decided that lynching black people was funny. It’s that the white people in the frame of the picture say and do nothing, which is reminiscent of so many pictures of real lynchings, where ordinary white people either smiled for the cameras or impassively bore witness to a horrific murder and felt nothing. These white fans in the University of Wisconsin stands apparently felt nothing. They didn’t point. They didn’t object. They just stared ahead. And that’s more troubling than the costume itself.**

#### Institutional condoning of racist speech alienates Black students, and causes many to drop out.

**Wilkerson:** Wilkerson, Isabel [Contributor, The New York Times] “Campus Blacks Feel Racism’s Nuances.” *The New York Times.* 1988. RP

-Perceptions – assuming state does nothing means blacks will leave colleges

-Survey of several schools

**Recent cases of racial harassment on the nation's campuses and a general atmosphere of racial tension have become increasingly important factors in the decisions made by many black families about where to send their children to college**, according to high school counselors and black students and their families. **The perception of racial hostility is inducing more families to send their children to historically black colleges to avoid the issue altogether, while others are scrutinizing predominantly white schools more carefully to weed out those that appear less racially tolerant.** ''Our schools are getting more and more applications from students who are disgruntled,'' said Alan Kirschner, vice president for programs and public policy at the United Negro College Fund. ''These students want the chance to develop without the threat of harassment that looms over many of those campuses.'' Kharis McLaughlin, a Boston guidance counselor who works with black college-bound students, remembers the apprehension a group of black students felt when she recently took them to the University of Massachusetts at Amherst, where a racial melee occurred after the 1986 World Series. **''Some students were a bit fearful,'' Mrs. McLaughlin said. ''Whether it's right or wrong, these things will sway people if they perceive a danger. If you hear that someone had a horrible experience at a school, you're not likely to go**. That's how decisions are made.'' But the choices seem to be getting narrower for blacks looking for predominantly white schools not touched by racial turmoil. I**n the last five years, incidents of racial harassment or violence have been reported at more than 300 colleges and universities across the country, according to the National Institute Against Prejudice and Violence**, an independent, nonprofit policy research group based in Baltimore that tracks racial violence on college campuses. All types of campuses are involved, a including the University of Massachusetts at Amherst, The Citadel, Smith College, Brown University, Wesleyan University, the University of Michigan, the University of Wisconsin and the University of Florida. The incidents range from racist graffiti and hate notes to the formation of white supremacy groups and allegations of racially motivated brutality by campus police. **And at hundreds of other campuses where there may be no reports of overt acts of bigotry, black students describe a general sense of polarization and hostility. Last week, more than 1,000 students, most of them black, halted traffic with a sit-in on Broad Street in the middle of Temple University's Philadelphia campus, after members of a white fraternity, armed with baseball bats and sticks, chased three blacks they believed had broken windows of their fraternity house. Eleven students were injured in the melee, eight of them black, and students said the campus police had used excessive force and handcuffed only black students**. At Emory University in Atlanta last March, a black woman found racist epithets scrawled in her dormitory room and her stuffed animals ripped apart. The case is being investigated by the police and the Georgia Bureau of Investigation. On Sunday at Trinity College in Hartford, billiard balls were thrown through a window at a black cultural center, setting off a protest march by black students the next day. Because of such incidents, racial harassment has become a standard question facing college representatives trying to recruit black students to predominantly white campuses, and with each racial incident comes a battery of calls from concerned black parents of current or prospective students, college officials say. The officials are less inclined to say whether black applications to their schools have risen or decreased, and without access to such data at all campuses where incidents have occurred, it is impossible to quantify cause and effect. Despite the recent incidents, a big majority of the nation's one million black college students - about 80 percent - remain enrolled at the nation's predominantly white colleges, as against about 20 percent at historically black colleges, said Dr. Reginald Wilson, a senior scholar at the American Council on Education. **''There's no question in my mind that black kids are leaving white schools or not going to them in the first place because of the chilly climate**,'' he said. ''But it's not the parting of the Red Sea. There is not a flood of people leaving white schools.'' But even schools that have taken the lead in censuring acts of bigotry are finding that the perception of a hostile campus may long outlive the incidents themselves. After months of indecision, Robin Scott, a graduating senior at Cass Technical High School in Detroit, recently chose Spelman College, a historically black women's college in Atlanta, over the University of Michigan, where racist jokes broadcast on the campus radio station and the distribution of racist fliers in 1987 marred the school's reputation. The university administration has since instituted a code that specifically prohibits racial harassment and has sponsored many conferences and seminars to encourage racial tolerance. Still, Ms. Scott's recent visit to the Ann Arbor campus confirmed suspicions founded on the incidents, she said. ''The white students were cold and distant,'' she said. **''I have to deal with racism the rest of my life. Why should I deal with that in college**?'' Last fall, two members of an all-white fraternity at the University of Mississippi were stripped, bound and stranded at Rust College, a predominantly black school nearby, with racial slurs and ''KKK'' written on their chests. Although one fraternity member was expelled and four were suspended for the incident, recruiting is still difficult. ''I've been at this university 28 years, and the progress made here is absolutely remarkable,'' said Ed Meek, a spokesman for the University of Mississippi. ''Yet a problem like that negates all of that in the minds of people.'' Since then, the incidents have dogged the university in its effort to attract more black students. ''We recruit very aggressively, one on one, and that subject comes up,'' Mr. Meek said. ''We have learned in some cases to bring it up ourselves.'' It does not take long for images and perceptions to calcify, students say. ''We all have families across the nation and we go back and tell them, and these things spread,'' said Yvette Russell, a black student at the University of Massachusetts at Amherst. A recent study by the Institute Against Prejudice and Violence showed that one out of five minority students is subjected to some form of physical or psychological racial harassment every year. One out of three of those victims re-experience harassment every year. ''We're seeing a spiraling of tension,'' said Dr. Howard J. Ehrlich, a sociologist who is the research director of the institute. ''Most of the incidents are forms of psychological harassment that involve the total humiliation of the student. I have no doubt that the increase in enrollment at black colleges is a result of black students' apprehension.'' Some parents and students try to find clues about a campus's atmosphere and commitment to diversity by poring over guidebooks, checking black retention and graduation rates, going over the ratios of blacks to the total enrollment. But some parents are finding there is no way to shield their children completely. One couple in New York had settled on Brown University as the No. 1 choice for their 16-year- old daughter, Jessica, who will be putting in her applications next year. But the family was dismayed when it learned of several racial incidents at the campus, which is in Providence. ''It was a reaction of, ''Now what do we do?' '' said Jessica's mother. Could Happen Anywhere These incidents could happen anywhere, Dr. Ehrlich said, adding, ''There are no external characteristics that will tell you on what campus the incidents will occur.'' Indeed, some black students end up regretting the choice they made. ''At times I wish I had gone somewhere else so that I wouldn't have to deal with these things,'' said Derrick Young, a student at the University of Illinois, where racial tensions rose last month when the police broke up two predominantly black parties. ''I spend hours upon hours dealing with these types of issues. That's time away from studying.'' Many, like Clarence Wilson of Oklahoma City, are transferring to black institutions. Last year, Mr. Wilson left the University of Oklahoma, where white fraternity members were seen wearing T-shirts emblazoned with black stereotypical characters and where he said white friends would socialize with him in dormitory rooms but not in public. Now he is a sophomore at Xavier College in New Orleans. ''I decided it was time to leave,'' he said. ''I realized I was missing something.'' Tony Hampton, of Chicago, says he does not think he would be a graduating college senior if he had not gone to Xavier. ''Not until I came to Xavier did I get some self-esteem,'' Mr. Hampton said. But others say black students need to become accustomed to being in the minority. ''You take a risk of these things' happening whenever you go to a predominantly white school,'' said Gene Williams, a junior at Emory University in Atlanta. ''Emory is really just a microcosm of of our whole country.'' Education experts warn that merely turning to black schools is not the long-term solution. ''Those colleges don't have the capacity to handle all those kids,'' Dr. Wilson said. ''We can't use the black schools as an escape. The question is, How can we make the white schools more hospitable?, because that's where the bulk of them are going to go.''

#### The First Amendment is rooted in racism, and free speech serves as a tool to legitimize violence onto minorities.

**Boler:** Boler, Megan [Professor, Virginia Tech University] “All Speech is Not Free: The Ethics of ‘Affirmative Action Pedagogy’”. *Philosophy of Education.* 2000. RP

-Law unequal

-Reason it protects free speech is because white people have no reason to care

On what basis might one justify an affirmative action pedagogy? The first justification is forwarded by legal scholars in the area of critical race theory. The authors of Words that Wound address the tension between the First and Fourteenth amendment. **The tension arises because, in fact all people are not equally protected under the law due to the institutionalized inequities within our society. This complicates the effectiveness of the First Amendment. Scholarship in critical race theory and educational analyses document that in recent years we find incidents of hate speech primarily to be directed at racial, religious, or sexual minorities. Not surprisingly, one finds in turn that invocations of the right to free speech are most often invocations to protect the right of the members of the dominant culture to express their hatred toward members of minority culture. These authors make important legal and historical cases to support their observation that, in practice, while the rhetoric of the First Amendment is a buzz word that makes all of us want to rally for its principle, in practice “the First Amendment arms conscious and unconscious racists — Nazis and liberals alike —** with a constitutional right to be racist. Racism is just another idea deserving of constitutional protection like all ideas.”4 Similarly, Judith Roof, a scholar from another discipline addresses class- room dynamics and argues that we must “read the appeal to the First Amendment as itself a kind of panic response in the same order as hate speech itself.” **A second justification for privileging marginalized voices is based on the measurement of the psychological effect of hate speech on targeted groups and individuals.** As one legal scholar explains, hate speech affects its victim in the visceral experience of a “disorienting powerlessness,” an effect achieved because hate speech is comparable to an act of violence.6 **In reaction to hate speech, the target commonly experiences a “state of semishock,” nausea, dizziness, and an inability to articulate a response**. This scholar gives an example of a student who is white and gay. The student reports that in an instance where he was called “faggot” he experienced all of the above symptoms. Yet when he was called “honky,” he did not experience the disorienting powerlessness. As the scholar remarks, “**the context of the power relationships in which the speech takes place, and the connection to violence must be considered as we decide how best to foster the freest and fullest dialogue within our communities.**” This brings me to another key point: the analysis of utterance in the classroom requires more than rational dialogue. In fact, the critical race theorists argue that because racism is irrational, no amount of rational dialogue will change racist attitudes. I disagree, in part because I am convinced that classroom discussion must recognize the emotions that shape and construct the meanings of our claims, our interchange with one another, and our investments in particular world-views. Thus a discussion of racism or homophobia cannot rely simply on rational exchange, but must delve into the deeply emotional investments and associations that surround perceptions of difference and ideologies. One is potentially faced with allowing one’s world-views to be shattered, in itself a profoundly emotionally charged experience.

#### Wisconsin codes prove speech codes are ONLY enforced against white racists.

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

-Speech codes worked to combat racism

-Wisconsin study

**A further concern expressed about the adoption of speech rules was that they would be used to repress the speech of the very groups they were meant to protect. Referring to historical civil rights abuses involving members of racial minorities, opponents of discriminatory speech rules have argued that such regulations can too easily be used against minorities expressing unpopular opi- nions.5 5 There is, however, nothing in the experiences with Wis- consin's rule to show that this has occurred in practice**. Although three complaints were brought against minority group members or females, only one was found to be within the scope of the rule. **In contrast, white males were named as the alleged violators in fifteen of the complaints filed under the rule.5 6 In the ten cases in which discipline was imposed, nine of the students disciplined were white males, and one was a white female. In all ten, the person harassed was female or a minority group member.** Thus, the fear of abusing the rule to the detriment of those intended to be protected has proved unfounded in the cases at Wisconsin.

#### Free speech will ONLY BE USED BY THE WHITE MAJORITY – blacks fear hate speech and will stay home

**Fang:** Fang, Marina [Contributor, The Huffington Post] “Most College Students Want Free Speech on Campuses – But Not When It’s Hate Speech.” *Huffington Post.* April 2016. RP

**But students understand the limitations of free speech policies, especially with regard to discriminatory and offensive rhetoric. In recent months, many students of color have called on their college administrators to more fully address racism on campuses**, arguing that their campuses do not promote openness and diversity**. “Students do appear to distinguish controversial views from what they see as hate speech — and they believe colleges should be allowed to establish policies restricting language and certain behavior that are intentionally offensive to certain groups**,” the survey’s organizers wrote. Yet about 54 percent of students said that “the climate on campus prevents some people from saying what they believe because others might find it offensive.” Gallup, in collaboration with the Knight Foundation and the Newseum Institute, surveyed 3,000 students between the ages of 18 and 24 attending four-year colleges and universities in the United States. Amid a wave of incidents involving free speech and protests on college campuses, the survey’s organizers sought to gather students’ opinions about the First Amendment. **The survey noted that race plays a particular role in college students’ perceptions of First Amendment freedoms. For example, only 39 percent of the black students in the survey reported feeling less confident in the right to peacefully assemble, compared to 70 percent of white students. S**tudents are highly distrustful of the press. Nearly 60 percent of the students surveyed “have little or no trust in the press to report the news accurately and fairly,” and many expressed mixed opinions about the media’s coverage of campus protests. While the vast majority of students surveyed said that the press should generally have unrestricted access to campus protests, close to half said that in some cases, there can be reasons to bar the press, like if protesters think that the reporter may be biased, or whether “the people at the protest say they have a right to be left alone.” **The survey indicated that students are also concerned about the use of social media, with many noting that they feel that it can lead to uncivil and hateful discussions and that it can be easy to express opinions anonymously.** For example, Yik Yak, a popular social network on college campuses, allows anonymous postings. Many college students have reported seeing hateful Yik Yak posts, increasing pressure on the company to crack down on people who use the app to harass others.

#### State support for hate speech through police protection implicitly views it as legitimate.

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

**The third doctrinal pillar supporting racist speech is the refusal to recognize that tolerance and protection of hate group activities by the government is a form of state action. To allow an organization known for violence, persecution, race hatred, and commitment to racial supremacy to exist openly, and to provide police protection and access to public streets and college campuses for such a group, means that the state is promoting racist speech**. If not for such support, hate groups would decline in efficacy. The chilling sight of avowed racists in threatening regalia marching through our neighborhoods with full police protection is a statement of state authorization.283 **The Klan marches because marching promotes the Klan, and because of the terrorizing and inciting effect of its public displays. Open display conveys legitimacy. The government advances this effect when it protects these marches. In addition, the failure to provide a legal response limiting hate propaganda elevates liberty interests of racists over liberty interests of targets.** A member of the Georgia Bureau of Investigation, for example, once suggested to whites targeted for hate speech because of their association with African Americans that they should avoid being seen in cars with African Americans, and cease inviting African Americans to their homes.284 The effect of racist propaganda is to devalue the individual and to treat masses of people in a degraded way with no measure of individ- ual merit. This is precisely what civil libertarians oppose when the state acts.285 Because racist speech is seen as private, the connection to loss of liberty is not made. **State silence, however, is public action where the strength of the new racist groups derives from their offering legitimation and justification for otherwise socially unacceptable emo- tions of hate, fear, and aggression**.286 The need for a formal group, for a patriotic cause, and for an elevation of the doubting self are part of the traditional attraction of groups like the Klan. **Government protec- tion of the right of the Klan to exist publicly and to spread a racist message promotes the role of the Klan as a legitimizer of racism.**

#### Focusing on free speech is a convenient excuse to not focus on other problems on campus, such as Neo-Nazis or racists.

**Wise:** Wise, Tim [Timothy Jacob "Tim" Wise is an American anti-racism activist and writer. Since 1995, he has given speeches at over 600 college campuses across the U.S.] “Hate Speech Codes Will Not End Racism and Hate Crimes.” *Opposing Viewpoints.* 2007. RP

Sadly, perhaps the most important missing ingredient in the struggle to uproot racism, is white outrage: not at those who challenge racism (oh we've plenty of anger for them, typically), but rather, at those who are white like us, and whose racism we listen to with amusement, more so than indignation. **So, for example, notice how the free speech supporters wax eloquent about the importance of upholding Chira's right to be a racist prick, but they evince almost no hostility towards [him] and his message, beyond the obligatory throw-away line: "I completely reject his views, but will fight for his right to express them." In other words, they are far more worked up about the possibility (however slight it appears to be) that the Administration may sanction the Nazi, than they are about the fact that *there is a Nazi on their campus in the first place*. Which brings up the question: does Nazism not bother them that much? Or have they confused the valid concept of free speech with the completely invalid notion that one shouldn't even condemn racists,** out of some misplaced fealty to their rights (which notion of course relinquishes one's *own* right to speak back, and forcefully, to assholes like Chira)? **I long for the day when whites will get as angry at one of our number supporting bigotry and genocidal political movements, as we do at those who denounce the bigots and suggest that the right of students of color to be educated in a non-hostile environment is just as important as the right to spout putrid inanities. What's more, I long for the day when whites stage sit-ins to demand a more diverse and equitable college environment for students of color (which currently is threatened by rollbacks of affirmative action, for example), just as quickly as we stage them to defend free speech for fascists**, which, at Bellarmine at least, shows no signs of being endangered, so quick has the Administration been to defend Chira's liberties. In the final analysis, when whites take it upon ourselves to make racists and Nazis like Chira feel unwelcome at our colleges and in our workplaces, by virtue of making clear our own views in opposition to them, all talk of hate speech codes will become superfluous. Where anti-racists are consistent, persistent, and uncompromising, and where anti-racist principles are woven into the fabric of our institutions, there will be no need to worry about people like Chira any longer.

#### The public/private distinction has empirically allowed racists to try and avoid responsibility

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “If He Hollers Let Him Go: Regulating Racist Speech on Campus.” *Duke Law Journal.* 1990. RP

**There are critics who would contend that Brown is inapposite be- cause the equal protection clause only restricts government behavior, whereas the first amendment protects the speech of private persons**. They say, "Of course we want to prevent the state from defaming blacks, but we must continue to be vigilant about protecting the speech rights, even of racist individuals, from the government. In both cases our con- cern must be protecting the individual from the unjust power of the state." **At first blush, this position seems persuasive, but its persuasiveness relies upon the mystifying properties of constitutional ideology. In par- ticular, I refer to the state action doctrine. By restricting the applica- tion of the fourteenth amendment to discrimination implicating the government, the state action rule immunizes private discriminators from constitutional scrutiny. In so doing, it leaves untouched the largest part of the vast system of segregation in the United States**. The Civil Rights Cases, in which this doctrine was **firmly established, stands as a monument preserving American racial discrimination. Although the origin of state action is textual, countervailing values of privacy, freedom of asso- ciation, and free speech all have been used to justify the rule's exculpa- tion of private racism.** 61 In the abstract, the right to make decisions about how we will edu- cate our children or with whom we will associate is an important value in American society. But when we decontextualize by viewing this privacy value in the abstract, we ignore the way it operates in the real world.62 We do not ask ourselves, for example, whether it is a value to which all persons have equal access. And we do not inquire about who has the resources to send their children to private school or move to an exclusive suburb.63 The privacy value, when presented as an ideal, seems an ap- propriate limitation on racial justice because we naively believe that eve- ryone has an equal stake in this value. The argument that distinguishes private racist speech from the gov- ernment speech outlawed by Brown suffers from the same decontextual- izing ideology. **If the government is involved in a joint venture with private contractors to engage in the business of defaming blacks, should it be able to escape the constitutional mandate that makes that business illegal simply by handing over the copyright and the printing presses to its partners in crime? I think not. And yet this is the essence of the position that espouses first amendment protection for those partners**. In an insightful article considering the constitutional implications of government regulation of pornography, Frank Michelman has observed that the idea of state action plays a crucial, if unspoken, role for judges and civil libertarians who favor an absolute rule against government reg- ulation of private pornographic publications (or racist speech), even when that expression is causative "of effects fairly describable ... as deprivations of liberty and denials of equal protection of the laws." 64 He notes that judges and civil libertarians would not balance the evils of private subversions of liberty and equal protection against the evils of government censorship because "the Constitution, through the state ac- tion doctrine, in effect tells them not to." 65 Michelman suggests that the state action doctrine, by directing us to the text of the fourteenth amend- ment, diverts our attention from the underlying issue-whether we should balance the evils of private deprivations of liberty against the gov- ernment deprivations of liberty that may arise out of state regulations designed to avert those private deprivations. When a person responds to the argument that Brown mandates the abolition of racist speech by reciting the state action doctrine, she fails to consider that the alternative to regulating racist speech is infringement of the claims of blacks to liberty and equal protection.6 6 The best way to constitutionally protect these competing interests is to balance them di- rectly. To invoke the state action doctrine is to circumvent our value judgment as to how these competing interests should be balanced.67 The deference usually given to the first amendment values in this balance is justified using the argument that racist speech is unpopular speech, that, like the speech of civil rights activists, pacifists, and reli- gious and political dissenters, it is in need of special protection from majoritarian censorship. But for over three hundred years, racist speech has been the liturgy of America's leading established religion, the religion of racism. Racist speech remains a vital and regrettably popular charac- teristic of the American vernacular. 6 It must be noted that there has not yet been satisfactory retraction of the government-sponsored defamation in the slavery clauses,69 the Dred Scott decision,70 the black codes, the segregation statutes, and countless other group libels. The injury to blacks is hardly redressed by deciding the government must no longer injure our reputation if one then invokes the first amendment to ensure that racist speech continues to thrive in an unregulated private market. 71 Consider, for example, the case of MeLaurin v. Oklahoma State Re- gents,72 where the University of Oklahoma graduate school, under order by a federal court to admit McLaurin, a black student, designated a spe- cial seat, roped off from other seats, in each classroom, the library, and the cafeteria. The Supreme Court held that this arrangement was uncon- stitutional because McLaurin could not have had an equal opportunity to learn and participate if he were humiliated and symbolically stigmatized as an untouchable. Would it be any less injurious if all McLaurin's class- mates had shown up at the class wearing blackface? Should this sym- bolic speech be protected by the constitution? Yet, according to a Time magazine report, last fall at the University of Wisconsin "members of the Zeta Beta Tau fraternity staged a mock slave auction, complete with some pledges in blackface.''73 More recently, at the same university, white male students trailed black female students shouting, 'I've never tried a nigger before.' "74 These young women were no less severely in- jured than was Mr. McLaurin simply because the University did not di- rectly sponsor their assault. If the University fails to protect them in their right to pursue their education free from this kind of degradation and humiliation, then surely there are constitutional values at stake. It is a very sad irony that the first instinct of many civil libertarians has been to express concern for possible infringement of the assailants' liberties while barely noticing the constitutional rights of the assailed. Shortly after Brown, many southern communities tried to escape the mandate of desegregation by closing public schools and opening private (white) academies. These attempts to avoid the fourteenth amendment through the privatization of discrimination consistently were invalidated by the courts.75 In essence, the Supreme Court held that the defamatory message of segregation would not be insulated from constitutional pro- scription simply because the speaker was a non-government entity. The Supreme Court also has indicated that Congress may enact leg- islation regulating private racist speech. In upholding the public accom- modations provisions of Title II of the Civil Rights Act of 196476 in HeartofAtlanta Motel v. UnitedStates, the Court implicitly rejected the argument that the absence of state action meant that private discrimina- tors were protected by first amendment free speech and associational rights.7 7 Likewise in Bob Jones University v. United States,78 the court sustained the Internal Revenue Service's decision to discontinue tax ex- empt status for a college with a policy against interracial dating and mar- riage. The college framed its objection in terms of the free exercise of religion, since their policy was religiously motivated, but the Supreme Court found that the government had "a fundamental, overriding inter- est in eradicating racial discrimination in education" that "substantially outweighs whatever burden denial of tax benefits" 79 placed on the col- lege's exercise of its religious beliefs. It is difficult to believe that the University would have fared any better under free speech analysis or if the policy had been merely a statement of principle rather than an en- forceable disciplinary regulation.80 Regulation of private racist speech also has been held constitutional in the context of prohibition of race- designated advertisements for employees, home sales, and rentals.8' Thus Brown and the anti-discrimination law it spawned provide pre- cedent for my position that the content regulation of racist speech is not only permissible but may be required by the Constitution in certain cir- cumstances. This precedent may not mean that we should advocate the government regulation of all racist speech, but it should give us pause in assuming absolutist positions about regulations aimed at the message or idea such speech conveys. If we understand Brown-the cornerstone of the civil rights movement and equal protection doctrine-correctly, and if we understand the necessity of disestablishing the system of signs and symbols that signal blacks' inferiority, then we should not proclaim that all racist speech that stops short of physical violence must be defended.

#### Allowing universal free speech prioritizes the racists – different groups experience speech differently – this is a view from nowhere

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “If He Hollers Let Him Go: Regulating Racist Speech on Campus.” *Duke Law Journal.* 1990. RP

I write this Article from within the cauldron of this controversy.19 **I make no pretense of dispassion or objectivity, but I do claim a deep commitment to the values that motivate both sides of the debate**. **As I struggle with the tension between these constitutional values, I particularly appreciate the experience of both belonging and not belonging that gives to African Americans and other outsider groups a sense of duality**. W.E.B. Du Bois-scholar and founder of the National Association for the Advancement of Colored People--called the gift and burden inherent to the dual, conflicting heritage of all African Americans their "second- sight**." The "double consciousness" of groups outside the ethnic main- stream is particularly apparent in the context of this controversy. Blacks know and value the protection the first amendment affords those of us who must rely upon our voices to petition both government and our neighbors for redress of grievances.** Our political tradition has looked to "the word," to the moral power of ideas, to change a system when neither the power of the vote nor that of the gun are available. This part of us has known the experience of belonging and recognizes our common and inseparable interest in preserving the right of free speech for all. **But we also know the experience of the outsider. The Framers excluded us from the protection of the first amendment. The same Constitution that established rights for others endorsed a story that proclaimed our inferiority. It is a story that remains deeply ingrained in the American psyche. We see a different world than that which is seen by Americans who do not share this historical experience.** We often hear racist speech when our white neighbors are not aware of its presence. It is not my purpose to belittle or trivialize the importance of de- fending unpopular speech against the tyranny of the majority. There are very strong reasons for protecting even racist speech. Perhaps the most important reasons are that it reinforces our society's commitment to the value of tolerance, and that, by shielding racist speech from govern- ment regulation, we will be forced to combat it as a community. These reasons for protecting racist speech should not be set aside hastily, and I will not argue that we should be less vigilant in protecting the speech and associational rights of speakers with whom most of us would disagree. But I am deeply concerned about the role that many civil libertarians have played, or the roles we have failed to play, in the continuing, real-life struggle through which we define the community in which we live. **I fear that by framing the debate as we have-as one in which the liberty of free speech is in conflict with the elimination of racism-we have advanced the cause of racial oppression and have placed the bigot on the moral high ground, fanning the rising flames of racism. Above all, I am troubled that** we have not listened to the real victims**, that we have shown so little empathy or understanding for their injury, and that we have abandoned those individuals whose race, gender, or sexual orienta- tion provokes others to regard them as second class citizens. These individuals' civil liberties are most directly at stake in the debate**.27

#### The allowance of hate speech shatters coalition building -- it lets dominant groups experience cognitive dissonance to minorities

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

The effect on non-target-group members is also of constitutional dimension. **Associational and other liberty interests of whites are cur- tailed by an atmosphere rife with racial hatred**.91 In addition, the process of dissociation can affect their mental health. **Dominant-group members who rightfully, and often angrily, object to hate propaganda share a guilty secret: their relief that they are not themselves the tar- get of the racist attack. While they reject the Ku Klux Klan, they may feel ambivalent relief that they are not African-American, Asian, or Jewish**. Thus they are drawn into unwilling complacency with the Klan, spared from being the feared and degraded thing. **Just as when we confront human tragedy - a natural disaster, a plane crash - we feel the blessing of the fortunate that distances us from the victims, the presence of racist hate propaganda distances right-thinking dominant-group members from the victims, making it harder to achieve a sense of common humanity.** **Similarly, racist propaganda forces victim-group members to view all dominant-group members with suspicion**.92 It **forces well-meaning dominant-group members to use kid-glove care in dealing with outsiders.93 This is one reason why social relations across racial lines are so rare in America.**

#### Completely unlimited free speech prioritizes racists over people who just want to learn – denies education to minorities.

**Wise:** Wise, Tim [Timothy Jacob "Tim" Wise is an American anti-racism activist and writer. Since 1995, he has given speeches at over 600 college campuses across the U.S.] “Hate Speech Codes Will Not End Racism and Hate Crimes.” *Opposing Viewpoints.* 2007. RP

**Secondly, the free speech rights of racists, by definition, must be balanced against the equal protection rights of those targeted by said speech. If people have the right to be educated or employed in non-hostile environments (and the courts and common sense both suggest they do), and if these rights extend to both public and private institutions (and they do), then to favor the free speech rights of racists, over and above the right to equal protection for their targets, is to trample the latter for the sake of the former**. In other words, there is always a balance that must be struck, and an argument can be made that certain kinds of racist speech create such a hostile and intimidating environment that certain limits would be not only acceptable, but *required*, as a prerequisite for equal protection of the laws, and equal opportunity. So, for example, face-to-face racist invective could be restricted, as could racist speech that carried with it the implied threat of violence. **Whether or not a neo-Nazi symbol of a movement that celebrates Adolph Hitler qualifies in that regard, is the issue to be resolved; but certainly it should not be seen as obvious that any and all speech is protected, just because of the right to free speech in the abstract**. Not to mention, does anyone honestly believe that Bellarmine, a Catholic school, would allow (or that most of the free speech absolutists would insist that they *should* allow) students to attend class with t-shirts that read: "Hey Pope Benedict: Kiss my pro-choice Catholic ass!" or "My priest molested me and all I got from my diocese was this lousy t-shirt?" No doubt such garments would be seen as disruptive, and precisely because they do not truly express a viewpoint or any substantive content, but rather, simply toss rhetorical grenades for the sake of shock value (likely part of Chira's motivation too). Chira's armband, in that regard, is quite different from a research paper, dissertation, or even a speech given on a soapbox, or article written for his own newspaper, if he had one: namely, unlike these things, the armband is not a rebuttable argument, nor does it put forth a cogent position to which "more speech" can be the obvious solution. It provokes an emotional response only, and little else.

#### The plan backfires and targets minority faculty

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

**Racist speech on campus occurs in a vastly different power context. Campus racism targets minority students and faculty. Minority students often come to the university at risk academically, socially, and psychologically. Minority faculty are typically untenured, overburdened, isolated, or even nonexistent**, as is the case at several law schools.254 **The marginalized position of minority faculty further marginalizes minority students.**

#### A perception of openness to hate speech causes Black people to drop out of college

**Wilkerson:** Wilkerson, Isabel [Contributor, The New York Times] “Campus Blacks Feel Racism’s Nuances.” *The New York Times.* 1988. RP

**Recent cases of racial harassment on the nation's campuses and a general atmosphere of racial tension have become increasingly important factors in the decisions made by many black families about where to send their children to college**, according to high school counselors and black students and their families. **The perception of racial hostility is inducing more families to send their children to historically black colleges to avoid the issue altogether, while others are scrutinizing predominantly white schools more carefully to weed out those that appear less racially tolerant.** ''Our schools are getting more and more applications from students who are disgruntled,'' said Alan Kirschner, vice president for programs and public policy at the United Negro College Fund. ''These students want the chance to develop without the threat of harassment that looms over many of those campuses.'' Kharis McLaughlin, a Boston guidance counselor who works with black college-bound students, remembers the apprehension a group of black students felt when she recently took them to the University of Massachusetts at Amherst, where a racial melee occurred after the 1986 World Series. **''Some students were a bit fearful,'' Mrs. McLaughlin said. ''Whether it's right or wrong, these things will sway people if they perceive a danger. If you hear that someone had a horrible experience at a school, you're not likely to go**. That's how decisions are made.'' But the choices seem to be getting narrower for blacks looking for predominantly white schools not touched by racial turmoil. I**n the last five years, incidents of racial harassment or violence have been reported at more than 300 colleges and universities across the country, according to the National Institute Against Prejudice and Violence**, an independent, nonprofit policy research group based in Baltimore that tracks racial violence on college campuses. All types of campuses are involved, a including the University of Massachusetts at Amherst, The Citadel, Smith College, Brown University, Wesleyan University, the University of Michigan, the University of Wisconsin and the University of Florida. The incidents range from racist graffiti and hate notes to the formation of white supremacy groups and allegations of racially motivated brutality by campus police. **And at hundreds of other campuses where there may be no reports of overt acts of bigotry, black students describe a general sense of polarization and hostility. Last week, more than 1,000 students, most of them black, halted traffic with a sit-in on Broad Street in the middle of Temple University's Philadelphia campus, after members of a white fraternity, armed with baseball bats and sticks, chased three blacks they believed had broken windows of their fraternity house. Eleven students were injured in the melee, eight of them black, and students said the campus police had used excessive force and handcuffed only black students**. At Emory University in Atlanta last March, a black woman found racist epithets scrawled in her dormitory room and her stuffed animals ripped apart. The case is being investigated by the police and the Georgia Bureau of Investigation. On Sunday at Trinity College in Hartford, billiard balls were thrown through a window at a black cultural center, setting off a protest march by black students the next day. Because of such incidents, racial harassment has become a standard question facing college representatives trying to recruit black students to predominantly white campuses, and with each racial incident comes a battery of calls from concerned black parents of current or prospective students, college officials say. The officials are less inclined to say whether black applications to their schools have risen or decreased, and without access to such data at all campuses where incidents have occurred, it is impossible to quantify cause and effect. Despite the recent incidents, a big majority of the nation's one million black college students - about 80 percent - remain enrolled at the nation's predominantly white colleges, as against about 20 percent at historically black colleges, said Dr. Reginald Wilson, a senior scholar at the American Council on Education. **''There's no question in my mind that black kids are leaving white schools or not going to them in the first place because of the chilly climate**,'' he said. ''But it's not the parting of the Red Sea. There is not a flood of people leaving white schools.'' But even schools that have taken the lead in censuring acts of bigotry are finding that the perception of a hostile campus may long outlive the incidents themselves. After months of indecision, Robin Scott, a graduating senior at Cass Technical High School in Detroit, recently chose Spelman College, a historically black women's college in Atlanta, over the University of Michigan, where racist jokes broadcast on the campus radio station and the distribution of racist fliers in 1987 marred the school's reputation. The university administration has since instituted a code that specifically prohibits racial harassment and has sponsored many conferences and seminars to encourage racial tolerance. Still, Ms. Scott's recent visit to the Ann Arbor campus confirmed suspicions founded on the incidents, she said. ''The white students were cold and distant,'' she said. **''I have to deal with racism the rest of my life. Why should I deal with that in college**?'' Last fall, two members of an all-white fraternity at the University of Mississippi were stripped, bound and stranded at Rust College, a predominantly black school nearby, with racial slurs and ''KKK'' written on their chests. Although one fraternity member was expelled and four were suspended for the incident, recruiting is still difficult. ''I've been at this university 28 years, and the progress made here is absolutely remarkable,'' said Ed Meek, a spokesman for the University of Mississippi. ''Yet a problem like that negates all of that in the minds of people.'' Since then, the incidents have dogged the university in its effort to attract more black students. ''We recruit very aggressively, one on one, and that subject comes up,'' Mr. Meek said. ''We have learned in some cases to bring it up ourselves.'' It does not take long for images and perceptions to calcify, students say. ''We all have families across the nation and we go back and tell them, and these things spread,'' said Yvette Russell, a black student at the University of Massachusetts at Amherst. A recent study by the Institute Against Prejudice and Violence showed that one out of five minority students is subjected to some form of physical or psychological racial harassment every year. One out of three of those victims re-experience harassment every year. ''We're seeing a spiraling of tension,'' said Dr. Howard J. Ehrlich, a sociologist who is the research director of the institute. ''Most of the incidents are forms of psychological harassment that involve the total humiliation of the student. I have no doubt that the increase in enrollment at black colleges is a result of black students' apprehension.'' Some parents and students try to find clues about a campus's atmosphere and commitment to diversity by poring over guidebooks, checking black retention and graduation rates, going over the ratios of blacks to the total enrollment. But some parents are finding there is no way to shield their children completely. One couple in New York had settled on Brown University as the No. 1 choice for their 16-year- old daughter, Jessica, who will be putting in her applications next year. But the family was dismayed when it learned of several racial incidents at the campus, which is in Providence. ''It was a reaction of, ''Now what do we do?' '' said Jessica's mother. Could Happen Anywhere These incidents could happen anywhere, Dr. Ehrlich said, adding, ''There are no external characteristics that will tell you on what campus the incidents will occur.'' Indeed, some black students end up regretting the choice they made. ''At times I wish I had gone somewhere else so that I wouldn't have to deal with these things,'' said Derrick Young, a student at the University of Illinois, where racial tensions rose last month when the police broke up two predominantly black parties. ''I spend hours upon hours dealing with these types of issues. That's time away from studying.'' Many, like Clarence Wilson of Oklahoma City, are transferring to black institutions. Last year, Mr. Wilson left the University of Oklahoma, where white fraternity members were seen wearing T-shirts emblazoned with black stereotypical characters and where he said white friends would socialize with him in dormitory rooms but not in public. Now he is a sophomore at Xavier College in New Orleans. ''I decided it was time to leave,'' he said. ''I realized I was missing something.'' Tony Hampton, of Chicago, says he does not think he would be a graduating college senior if he had not gone to Xavier. ''Not until I came to Xavier did I get some self-esteem,'' Mr. Hampton said. But others say black students need to become accustomed to being in the minority. ''You take a risk of these things' happening whenever you go to a predominantly white school,'' said Gene Williams, a junior at Emory University in Atlanta. ''Emory is really just a microcosm of of our whole country.'' Education experts warn that merely turning to black schools is not the long-term solution. ''Those colleges don't have the capacity to handle all those kids,'' Dr. Wilson said. ''We can't use the black schools as an escape. The question is, How can we make the white schools more hospitable?, because that's where the bulk of them are going to go.''

#### Preventing hate speech is key to equal application of the law – dominant white groups often have recourse that minorities don’t.

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

This limited imagination has not affected lawmakers faced with other forms of offensive speech. **Laws against dissemination of child pornography and the law of defamation and privacy are examples of areas in which the law recognizes that certain forms of expression are qualitatively different from the kind of speech deserving absolute pro- tection**.269 The **legal imagination is able to contemplate what it feels like to hear lies spread about one's professional competenc**y,270 to have one's likeness used for commercial gain without consent,271 or to hear unwanted obscenities on the radio.272 **American law has even, at times, provided a tort remedy for white plaintiffs who are "insulted" by "imputation of association with persons of a race to which there is prejudice."**273 When the legal mind understands that reputational in- terests, which are analogized to the preferred interest in propert must be balanced against first amendment interests, it recognizes the concrete reality of what happens to people who are defamed. Their lives are changed. **Their standing in the community, their opportuni- ties, their self-worth, their free enjoyment of life is limited.** To see this, and yet to fail to see that the very same things happen to the victims of racist speech, is selective vision. The selective consideration of one victim's story and not another's results in unequal application of the law. **Unlike the victims of defamation and other torts, the victims of racist speech are not representative of the population at large. In making typical legal concessions to the first amendment, we burden a range of victims**. In the case of flag-burning, we force patriots, veterans, and flag-lovers of all races to tolerate flag desecration as part of the price of freedom. **In contrast, when victims of racist speech are left to assuage their own wounds, we burden a limited class: the traditional victims of discrimination. This class already experiences diminished access to private remedies such as effective counterspeech**, and this diminished access is exacerbated by hate messages. Debasing speech discredits targets, further reducing their ability to have their speech taken seriously.274 **The application of absolutist free speech principles to hate speech**, then, is a choice to burden one group with a disproportionate share of the costs of speech promotion.275 **The principle of equality is violated by such alloca- tion.276 The more progressive principle of rectification or repara- tion277 - the obligation to repair effects of historical wrongs – is even more grossly violated.**

### A2 Alt Right

#### Status quo speech codes block the alt right from spreading even further.

**Burley:** Burley, Shane [Contributor, Waging Nonviolence] “How the Alt Right is trying to create a ‘safe space’ for racism on college campuses.” *Waging Nonviolence.* October 2016. RP

-Speakers banned from campuses + heckling

-Milo example

**While the Alt Right is fighting for a platform, many on college campuses are taking the example of groups like the One People’s Project and are rallying community pressure to disallow Alt Right speakers regular access to collegiate forums. At DePaul University, Alt Right commentator and Gays for Trump founder Milo Yiannopoulos was brought by the College Republicans. Ahead of this, a petition began circulating, largely stemming out of the Black Student Union work, to push DePaul to do more about hate speech on campus. Protesters disrupted the event by getting on stage and preventing him from speaking, functionally ending it. The college later canceled Yiannopoulos’s second scheduled speech, citing his provocative rhetoric as the reason.** Protesters later attempted to disrupt a debate-watching party where Trump student supporters had congregated to root for their candidate.

#### The alt right exists on campuses in the status quo, due to free speech guaranteeing them speaking engagements

**Harkinson:** Harkinson, Josh [Reporter and contributor, Mother Jones] “The Push to Enlist ‘Alt-Right’ Recruits on College Campuses.” *Mother Jones.* December 2016. RP

**Though the campus group Students for Trump ostensibly focused on electing and supporting Trump, at least one chapter has openly embraced white nationalist rhetoric and causes.** The [Facebook page](https://www.facebook.com/PSU4TRUMP/) of the group's Portland State University chapter posted an infographic called "[What Does White Genocide Look Like](https://www.facebook.com/PSU4TRUMP/posts/925071100970776)," "[White Lives Matter](https://www.facebook.com/PSU4TRUMP/photos/a.772977822846772.1073741828.752648528213035/859094717568415/?type=3&theater)" memes, and a [quote](https://www.facebook.com/PSU4TRUMP/photos/a.772977822846772.1073741828.752648528213035/859223847555502/?type=3&theater) from former Rhodesian Prime Minister Ian Smith about how "colonialism is a wonderful thing**." In a counterprotest to a student union demonstration against arming campus police, Students for Trump held up signs reading "Thug Lives Don't Matter.**" PSU Students who spoke out against Students for Trump were reportedly [targeted online](https://thinkprogress.org/how-students-for-trump-terrorized-portland-state-university-88396c06c743#.3t8eo3f1n) by anonymous accounts with racist slurs and death threats, according to *ThinkProgress*.**Campuses have mostly stopped short of banning such groups, opting instead to counter them with protests and educational efforts. Texas A&M University is hosting a counterevent Tuesday called "Aggies United" at its football stadium featuring musicians and activists.** "I find the views of the organizer—and the speaker he is apparently sponsoring—abhorrent and profoundly antithetical to everything I believe,” **the university's president, Michael Young,** [**said**](http://www.wfaa.com/news/local/texas-news/richard-spencers-host-at-texas-am-is-the-countrys-strongest-skinhead/361102653) **in a letter to the campus community last week.** "In my judgment, those views simply have no place in civilized dialogue and conversation." But, Young added, "**we have no plans to prohibit the speaker from using the room he has rented. Freedom of speech is a First Amendment right and a core value of this university, no matter how odious the views may be."**

#### Europe proves that bans on hate prevent *mobilization* of oppressive groups

**Parekh:** Parekh, Bhikhu “Is There a Case for Banning Hate Speech?” *Cambridge University Press.* 2012.

-Hate speech makes groups more powerful and lets them spread

-Normalizes violence

**Third, proscription of hate speech plays an important role in preventing political mobilization of hostility against particular groups. This is especially true if the limits are enacted before hate-based organizations have built up powerful networks and support and before their rhetoric has coarsened public sensibility**. As I argued earlier, a climate of intimidation and violence against identified groups develops over time. **Once it takes deep roots and poisons the relations between different groups, law lacks a supportive public opinion and is either not enacted or not enforced or takes a drastic form and risks provoking widespread resistance. In the developing societies, and even in such mature democracies as Britain, France, Germany, and the Netherlands, it is common for politicians and political parties to outbid each other by pandering to base political instincts and provoking hatred of whatever group appears to arouse popular dislike. Banning hate speech discourages them from doing so and inflaming the all-too-easily aroused passions in pursuit of short term gains. Although other factors played a part as well, it is worth noting that British elections, their media coverage, and political discourse in general have been healthier and more moderate as a result of the law proscribing incitement to racial hatred. Similar things have happened in India, Germany, Austria, the Netherlands, South Africa, and elsewhere, in all of which crude expressions of racial nad religious hatred have declined in recent years.** This is not to say, of course, that these sentiments have disappeared or even substantially declined in these countries, but rather that public life is conducted in a more civil language and that politicians appealing to such sentiments are generally treated with disdain by the general public and disowned by their leaders.

#### The alt-right exploits the idea of free speech to develop a platform.

**Burley:** Burley, Shane [Contributor, Waging Nonviolence] “How the Alt Right is trying to create a ‘safe space’ for racism on college campuses.” *Waging Nonviolence.* October 2016. RP

**A murmur began in May around Berkeley and the surrounding Bay Area as posters appeared overnight on the sides of buildings and wrapped on poles**. Adorned with images of statues of antiquity, these classical images of European men depicted as gods were intended to light a spark of memory in the mostly white faces that passed by them. With lines like “Let’s become great again” printed on them, the posters were blatant in their calls for European “pride,” clearly connecting romanticized European empires of the past to the populism of Donald Trump today. The posters were put up by Identity Europa, one of the lesser-known organizations amid that esoteric constellation of reactionary groups and figures known as the “Alt Right.” **They were part of a campaign around the country enticing college-age white people to join a new kind of white nationalist movement. While similar posters emerged elsewhere on the West Coast and Midwest, in central California they pointed toward a public event — one directed specifically toward the tradition of free speech at the University of California at Berkeley.** Shortly after the posters went up, a brief announcement came from Alt Right leader Richard Spencer and his think-tank, the National Policy Institute. They, along with Identity Europa and other white nationalist organizations, were planning to hold an “Alt Right Safe Space” in Berkeley’s Sproul Plaza on May 6. The “safe space” is a play on words for the Alt Right, using the phrase that many leftist-oriented facilities use for a code of conduct that bans oppressive or bigoted behavior. Instead, they intended to make a “safe space” for white racism, the public declaration of which has become unwelcome in most any space. The plan was to show up and publicly proselytize on the problems of multiculturalism and the need for “white identity.” Identity Europa founder Nathan Damigo joined Spencer, along with Johnny Monoxide, a podcaster and blogger from the white nationalist blog The Right Stuff, which has become popular in Internet racialist circles (racialist being a term they use, since racist carries a negative connotation) for its internal lingo and open use of racial slurs. Alt Right media outlet Red Ice Creations teamed up with Monoxide to livestream the event, bringing the white nationalist crowd together with their international audience of conspiracy theorists, anti-vaccine activists and [alternative religion](http://www.vice.com/read/how-a-thor-worshipping-religion-turned-racist-456) proponents. While live streaming to their crowd, they came ready to argue. “This guy’s anti-dialogical! He’s anti-white,” yelled Damigo when challenged on the racialist content of his talking points. For decades, both the institutional and radical left in the United States has relied on campus activism as a key part of its organizing base. **From the antiwar movement of the 1960s to the development of feminist and queer politics to the growing youth labor and Black Lives Matter movement, colleges have been a center for political encounters and mobilizations. The radicalization of students has often leaned to the left because the left’s challenges to systems of power seem like a perfect fit for people expanding their understanding of the world. Amid major shifts in U.S. politics, a space has opened for revolutionary right-wing politics that have not traditionally been accessible to those outside of the most extreme ranks of the white nationalist movement**. Today, the Alt Right is repackaging many of the ideas normally associated with neo-Nazis and KKK members into a new, more middle-class culture by using the strategies and language traditionally associated with the left. This means a heavy focus on argumentation and academic legitimacy, as well as targeting campus locations (and millennials) for recruitment. Until Hillary Clinton’s August 21 speech, most people had never heard of the Alt Right. However, it is a movement that has been growing for almost a decade in backroom conferences and racially-charged blogs. It is a kind of cultural fascism, one birthed out of the post-war fascist movements of Europe and given character by a culture of Twitter trolls and populist American anger. Yet, when it appears on campus, the Alt Right’s recruiting is hardly different from the Klan’s attempts to openly recruit members by leaving bags of leaflets and candy at people’s doorsteps. While the Alt Right Safe Space was put together as a joint effort with several nationalist organizations, Identity Europa emphasizes focusing on the youth most of all. The name and branding of Identity Europa are new, but the organization was started years ago as the National Youth Front. Nathan Damigo was an Iraq war veteran going to school at the University of California at Stanislaus when he took over the organization, shifting its ideological orientation from “civic nationalism” to “race realism,” the notion that whites have higher average IQ’s and a smaller propensity for crime than blacks. While Damigo notes that they have a “don’t ask, don’t tell” policy when it comes to gay members, he said that bi-racial and transgendered people would be turned away. For Damigo and others who trade in white nationalist talking points like “race realism,” the differences between races are significant. “Ethnic and racial or religious diversity can actually wreak havoc on a social system, and cause tons of problems,” Damigo said. “I do believe that there are differences between human populations … [T]he distribution of genes that affect behavior and intelligence are already known to not be equally distributed between all populations.” Identity Europa then represents a sort of “fraternal organization” where “European-descended” people can meet and network, working their way towards a kind of campus activism that challenges discourse and educational plans embedded with multiculturalism and egalitarianism. Such organizations have a long history on the right, stretching back to the 19th century fencing clubs and fraternities that popularized the pan-German ideas of Georg Schönerer — an immediate influence on Nazism. As organizers, however, Identity Europa do not follow the standard playbook for campus activism, which usually involves breaking broad political ideas into organized demands with reachable goals. Instead, they simply want to cultivate a subculture whose constituents will intervene in public discourse, thereby seeding their well-rehearsed talking points about racial inequality, white sovereignty and the return to heteronormative social roles. While Damigo brags about the growth of Identity Europa, it likely does not have membership beyond a few dozen people on campuses around the country at this point. However, there are reports of Identity Europa posters appearing at different places around the country almost weekly. Through its brand of social interruption, Identity Europa intends to foment a revolutionary right-wing culture — precisely the goal shared by Richard Spencer and his National Policy Institute. Spencer has been in right-wing politics for years, first joining as an assistant editor at the *American Conservative* after an article he published on the Duke Lacrosse sexual assault scandal made him a minor star. He later went to the controversial *Taki’s Magazine*, known for giving a voice to the shrinking paleoconservative movement and staffing dissident voices from the right who are regularly accused of racism. As he further cemented himself in this “dissident right” world, he developed the term “Alternative Right” to indicate the different strands that he saw uniting against multiculturalism, equality and American democracy. It was in this climate that Spencer founded the website Alternative Right, giving voice to a growing white nationalist movement that built on fascist intellectual traditions in Western Europe and challenged the right-wing connection to the American conservative movement. He eventually went on to take over the white nationalist think-tank, the National Policy Institute, or NPI, originally founded by William Regnery, using money inherited from the conservative publishing house, Regnery Publishing. The organization was meant to center on Samuel Francis, a former columnist with the *Washington Times* who was let go as he shifted further into white nationalism and associated with racialist organizations like American Renaissance and the Council of Conservative Citizens. Spencer took over the organization after Francis’s death, molding it into the intellectual core of the growing Alt Right movement. Spencer’s goal has always been the creation of a “meta-political” movement rather than one founded on contemporary political wedge issues. He hopes to draw together ideas like “white identitarianism” — a term used to brand the movement as being about European heritage — and the eugenics-invoking “human biodiversity.” Both are terms fostered by the so-called “European New Right” and its leading ideologues. What immediately distinguished Spencer’s role in the white nationalist movement from the older generation was his explicit focus on millennial outreach. For instance, his expensive NPI conferences are dramatically discounted for those under 30, and his new *Radix Journal* is marketed directly to an Internet culture of disaffected and angry white youths. He was an early proponent of podcasts as a main voice of the movement, a move that has given the Alt Right its conversational tone and made its ideas more accessible. **With Damigo, Spencer developed the Alt Right Safe Space idea to exploit the projection of free speech on college campuses, despite the movement’s general rejection of human rights. “I think it’s symbolic as a way of saying, ‘we’re here,’” Spencer explained.**

#### Allowing unrestricted free speech lets white nationalists build off of each other – Twitter proves.

**McElwee:** McElwee, Sean [Contributor, The Huffington Post] “The Case for Censoring Hate Speech.” *The Huffington Post.* July 2013. RP

It’s interesting to note how closely this idea resembles free market fundamentalism: simply get rid of any coercive rules and the “marketplace of ideas” will naturally produce the best result. **Humboldt State University compiled a visual map that charts 150,000 hateful insults aggregated over the course of 11 months in the U.S. by pairing Google‘s Maps API with a series of the most homophobic, racist and otherwise prejudiced tweets. The map’s existence draws into question the notion that the “twittersphere” can organically combat hate speech; hate speech is not going to disappear from twitter on its own.** The negative impacts of hate speech cannot be mitigated by the responses of third-party observers, as **hate speech aims at two goals. First, it is an attempt to tell bigots that they are not alone. Frank Collins — the neo-Nazi prosecuted in National Socialist Party of America v Skokie (1977) — said, “We want to reach the good people, get the fierce anti- Semites who have to live among the Jews to come out of the woodwork and stand up for themselves.”**

#### Radical proposals, like not restricting any free speech, trade off with other rights and cede power to conservatives.

**Delgado and Stefancic:** Richard Delgado and Jean Stefancic [Delgado is Charles Inglis Thomson Professor of Law, University of Colorado. J.D., U. Cali- fornia-Berkeley, 1974. Stefancic is theTechnical Services Librarian, University of San Francisco School of Law. M.L.S., Simmons College, 1963; M.A., University of San Francisco, 1989. “FOUR OBSERVATIONS ABOUT HATE SPEECH.” *Wake Forest Law Review.* Volume 44. 2009. RP

-Focus disad – looking to free speech means we ignore conservative overreach

-Absolutionist nature of the Aff erodes Democratic power

Our first observation concerns not so much the merits of the two positions as the nature of the pitched battle that is taking place. **Each of the controversies mentioned earlier features a progressive organization trying to impose its view on another of the same or very similar stripe. With hate speech, for example, the ACLU, FIRE, and other progressive organizations clash with campus authorities and activists of color over the legitimacy of controlling that form of expression**. In the simplest terms, First Amendment defenders maintain that campus speech should be free, while their adversaries insist that the campus should be free—but of racism. Their dispute features contrasting views about how to frame the central issue, the governing narrative, controlling case law, and the lessons of history. As we have noted, free-speech defenders invoke case law such as Brandenburg v. Ohio32 and New York Times Co. v. Sullivan33 that has decisively expanded the scope of free speech. These advocates invoke a particular kind of story, or narrative, as well. For them, defense of campus speech is part of a history that includes the struggle of Western society to rise above superstition and enforced orthodoxy.34 They cite heroes, such as Socrates, Galileo, and Peter Zenger, who put their bodies on the line to expand free expression, and writers such as John Locke, David Hume, Thomas Hobbes, and Voltaire, who placed it on a firm theoretical foundation.The equality faction approaches the problem from a different perspective. For them, defending racial and sexual minorities from hateful invective is an essential feature of safeguarding equal protection and equal dignity or, in the case of university administrators, a healthy environment for learning.36 This group, too, has its favorite cases, but they are ones like Brown v. Board of Education37 that emphasize the role of equality in education and other areas of life.38 Like their counterparts on the other side, they invoke stories that lie close to America’s core, including those of civil rights heroes like Medgar Evers, Rosa Parks, and Cesar Chavez, who fought to expand the rights of all citizens. They call upon different theorists, including Charles Lawrence and Catharine MacKinnon, who propose frameworks for limiting hateful expression. They cite the example of many Western democracies that have done just that. We mention the above not to highlight the indeterminacy of the debate or the way in which one can cite constitutional values on either side. We have done this elsewhere and believe that the party of multiculturalism has the better argument. Instead, we mention it to point out a feature that ought to have been obvious all along, but that we and most other commentators seem to have missed—namely, how the debate proceeds almost entirely between two groups of the progressive left: the ACLU and its followers, on the one hand, and minority groups, critical race theorists, and their allies on the other. **The struggle, in short, proceeds between two sets of progressive activists who, in most respects, see the world in very similar terms, consuming attention and energy at the very time when the political right—which holds little affection for either of them—has been registering large gains**. **For example, while the ACLU has been laboring to convince minorities of the error of their ways, conservative power has been rolling back the right of privacy by opening citizens’ library records to official prying and insisting on the right to snoop on e-mail and telephone exchanges**. At the same time, conservatives in government have carved out a broad sphere of governmental secrecy, greatly limiting the public’s access to information.49 These are, of course, areas close to a civil libertarian’s heart. By the same token, scholars like those writing for this symposium have been trying to convince the free-speech advocates of the error of their ways, while conservative judges and administrators have been steadily dismantling programs that lie close to the heart of civil rights advocates, including affirmative action, bilingual education, and the rights of immigrants.52 These same conservative judges and administrators have also been weakening courts’ abilities to redress racial discrimination through judicially created intent requirements, strict chains of causation, and limitations on who may sue and when.Two groups of moderate leftists have thus been energetically clashing while conservatives have been making steady inroads into programs both sets of leftists hold dear. This reality suggests that moderate leftists might wish to find some common ground and turn their attention to what their adversaries have been achieving at their expense. **One could analogize the situation to one in which two dogs, one slightly larger than the other, are carrying on a ferocious snarl-fest in the middle of the street, feinting and lunging, making a tremendous racket, blissfully unaware that the dog catchers are coming to take them to the municipal shelter where they will be euthanized ten days late**r.54 It is possible that with a new administration, the conservative assault on civil liberties and civil rights will ease somewhat. But historical forces such as the war on terror55 and the new color-blind approach to race relations56 are likely to generate continuing pressure on the progressive agenda regardless of who is in power in Washington. The hate-speech adversaries (and we do not exclude ourselves) need to ponder the expenditure of energy that they have been making and whether a détente of some sort is in order.57

#### Free speech is a construct created by whites to cement their privilege – it excuses racialized violence and aids Trumpian bigots

**Ceballos:** Ceballos, Cassandra [Writer, The Collegian.] “Opinion: Trump exemplifies why speech isn't really free. How Trump's rhetoric reflect white power.” *The Collegian.* September 2016. RP

-Accessibility; only some can access free speech

-Distracts from a structural critique of race relations

Some days I feel very lucky to be a Spider, given the difficult road I continue to navigate as a first-generation college student. But on other days, I’m caught off guard by the hatred and bigotry in this world, this country and apparently this campus. I no longer feel very lucky or even human. On these days, I do not intentionally wake up feeling targeted or hated. That is until an article, overheard conversation or poster freezes me. Abruptly, I’m no Spider, I am an “other.” The causes have nuances, but my reaction is routine: brain on overdrive and an instant need to distance myself, mentally and physically, from the sudden reality of my insignificance. This reaction happened to me walking through Spiderfest weeks ago as I headed to work. The merry sounds of chatter, music and Spider solidarity washed over me as I strolled through the tables, but the illusion of safety shattered as I witnessed something I was not prepared to see. The College Republicans brought a table to Spiderfest complete with “Trump/Pence” posters and paraphernalia. I don’t know why I was so surprised, so caught off guard. **Despite effort at every level of the university to promote an inclusive, diverse and accepting environment, it is well-known that some on this campus readily silence the voice of their peers, exposing themselves with op-ed pieces about Donald Trump or safe spaces. The ultimate irony of the ideology is they feel it is their speech that is being attacked, their rights being pushed to the wayside for the sake of "feelings." Much of Trump rhetoric indulges this view of free speech, positing that** people say and do as they feel, no matter whom it targets and to hell with the externalized consequences. **Here’s the problem: his rhetoric, the rhetoric of his supporters, the rhetoric of the above pieces and Hillary Clinton’s hispandering silence not only the voice of citizens, but erase entire narratives and ensures speech from the "other" never materializes. White supremacy, intimately entwined with Trumpism, fundamentally maintains the status quo of which speech is free and for whom. I challenge you to reconceive the notion of "free speech.**" Consider the field surrounding its invocation. **With cursory examination, history speaks for itself: free speech is a myth, concocted by and for the powerful while they simultaneously annihilated, enslaved and colonized a majority of the world’s population for centuries. How dare we debate degrees of freedom of speech in a land methodically fashioned to never be free for all but only free for some?** The "other" may change, but power remains shockingly static. **Trump’s version of free speech basically demands the right to vocally strip individuals of their humanity**. His minions prove this, assaulting silent protestors at his rallies with jeering support from the King Clown himself. **Trumpism promotes forcefully removing someone from an airplane for speaking Arabic, gets bullets fired at Mosques, citizens assaulted in grocery stores or on sidewalks. It bombed a church in Birmingham, got Dylann Roof a Big Mac after he murdered nine people and gave Philando Castille four bullets and a fatherless daughter after he complied with a police officer.** While pro-Trump Spiders may not get physical, please understand that silent support of the entity that encourages such behavior is in itself a violent act, impugning on vitality. For the protected, whose rhetoric and ideology Trumpism does not explicitly target, Trump can be isolated as a presidential candidate, albeit a very poor and obviously dangerous one. His nonsensical spouting about terrorism, outsourcing and immigrants are weakly constructed, lacking any intelligent or factual basis, rife with discrepancies and simplistic language meant to mask the fact that he actually has no idea what he is talking about. To the ‘other’, including myself, he is not just a presidential candidate but an embodiment of everything that keeps us powerless and vulnerable. Trumpism mandates that we actively participate in our oppression, absorbing the externalized consequences. Those protected observe and superficially worry, yet silently condone while we walk this country and campus with nebulous trepidation. At any moment, someone may come along and pick an "other" out of today’s diverse United States. At any moment, at Martin’s grocery shopping, walking around the city or to class, someone may assert, “Hey. You don’t belong here. I want you gone from this place and this country. This is MY America.” It might be loudly, openly, with a vocal or physical violation: a shove or hateful word, inviting others to join in on the erasure of this now-spotlighted human. Or it might be quiet, invisible and unsuspecting, with a slight smirk and thumbs up gesture next to Trump’s name as a symbol of support.

#### Free speech will ONLY BE USED BY THE WHITE MAJORITY – blacks fear hate speech and will stay home

**Fang:** Fang, Marina [Contributor, The Huffington Post] “Most College Students Want Free Speech on Campuses – But Not When It’s Hate Speech.” *Huffington Post.* April 2016. RP

**But students understand the limitations of free speech policies, especially with regard to discriminatory and offensive rhetoric. In recent months, many students of color have called on their college administrators to more fully address racism on campuses**, arguing that their campuses do not promote openness and diversity**. “Students do appear to distinguish controversial views from what they see as hate speech — and they believe colleges should be allowed to establish policies restricting language and certain behavior that are intentionally offensive to certain groups**,” the survey’s organizers wrote. Yet about 54 percent of students said that “the climate on campus prevents some people from saying what they believe because others might find it offensive.” Gallup, in collaboration with the Knight Foundation and the Newseum Institute, surveyed 3,000 students between the ages of 18 and 24 attending four-year colleges and universities in the United States. Amid a wave of incidents involving free speech and protests on college campuses, the survey’s organizers sought to gather students’ opinions about the First Amendment. **The survey noted that race plays a particular role in college students’ perceptions of First Amendment freedoms. For example, only 39 percent of the black students in the survey reported feeling less confident in the right to peacefully assemble, compared to 70 percent of white students. S**tudents are highly distrustful of the press. Nearly 60 percent of the students surveyed “have little or no trust in the press to report the news accurately and fairly,” and many expressed mixed opinions about the media’s coverage of campus protests. While the vast majority of students surveyed said that the press should generally have unrestricted access to campus protests, close to half said that in some cases, there can be reasons to bar the press, like if protesters think that the reporter may be biased, or whether “the people at the protest say they have a right to be left alone.” **The survey indicated that students are also concerned about the use of social media, with many noting that they feel that it can lead to uncivil and hateful discussions and that it can be easy to express opinions anonymously.** For example, Yik Yak, a popular social network on college campuses, allows anonymous postings. Many college students have reported seeing hateful Yik Yak posts, increasing pressure on the company to crack down on people who use the app to harass others.

#### Focusing on free speech is a convenient excuse to not focus on other problems on campus, such as Neo-Nazis or racists.

**Wise:** Wise, Tim [Timothy Jacob "Tim" Wise is an American anti-racism activist and writer. Since 1995, he has given speeches at over 600 college campuses across the U.S.] “Hate Speech Codes Will Not End Racism and Hate Crimes.” *Opposing Viewpoints.* 2007. RP

Sadly, perhaps the most important missing ingredient in the struggle to uproot racism, is white outrage: not at those who challenge racism (oh we've plenty of anger for them, typically), but rather, at those who are white like us, and whose racism we listen to with amusement, more so than indignation. **So, for example, notice how the free speech supporters wax eloquent about the importance of upholding Chira's right to be a racist prick, but they evince almost no hostility towards [him] and his message, beyond the obligatory throw-away line: "I completely reject his views, but will fight for his right to express them." In other words, they are far more worked up about the possibility (however slight it appears to be) that the Administration may sanction the Nazi, than they are about the fact that *there is a Nazi on their campus in the first place*. Which brings up the question: does Nazism not bother them that much? Or have they confused the valid concept of free speech with the completely invalid notion that one shouldn't even condemn racists,** out of some misplaced fealty to their rights (which notion of course relinquishes one's *own* right to speak back, and forcefully, to assholes like Chira)? **I long for the day when whites will get as angry at one of our number supporting bigotry and genocidal political movements, as we do at those who denounce the bigots and suggest that the right of students of color to be educated in a non-hostile environment is just as important as the right to spout putrid inanities. What's more, I long for the day when whites stage sit-ins to demand a more diverse and equitable college environment for students of color (which currently is threatened by rollbacks of affirmative action, for example), just as quickly as we stage them to defend free speech for fascists**, which, at Bellarmine at least, shows no signs of being endangered, so quick has the Administration been to defend Chira's liberties. In the final analysis, when whites take it upon ourselves to make racists and Nazis like Chira feel unwelcome at our colleges and in our workplaces, by virtue of making clear our own views in opposition to them, all talk of hate speech codes will become superfluous. Where anti-racists are consistent, persistent, and uncompromising, and where anti-racist principles are woven into the fabric of our institutions, there will be no need to worry about people like Chira any longer.

### A2 Militarism

#### The Aff requires police protection of protests – the colleges and state need to provide INCREASED POLICE.

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

**A corollary to the American position of protection of racist expres- sion is that the government must take certain affirmative steps to pre- serve that right**.167 **The state must make public facilities available on a nondiscriminatory basis to individuals and groups wishing to express their race hatred.**168 It must provide police protection to preserve or- der and protect speakers who are threatened by counter-demonstra- tors.169 **Since groups like the Klan typically draw angry opposition when they parade in public streets, this has meant that the Klan is entitled to publicly financed police escorts. Without this,** the right free speech is meaningless**. Angry and intolerant majorities could pre- vent unpopular minorities from using public facilities, rendering the right of free speech illusory.**

#### Free speech deflects attention from the injustices of capitalism – battles are fought over free speech, distracting from a structural critique – empirically shown.

**Khan:** Khan, Tariq [Contributor and Researcher, The Hampton Institute] “Masking Oppression as Free Speech: An Anarchist Take.” November 2015. RP

**In the present-day United States, a shallow idea of "free speech" is often wielded by the privileged as a way to direct attention away from critiques of existing conditions and systems; particularly critiques of capitalism, imperialism, white supremacy, and patriarchy. For example, two years ago when UC Berkeley students organized to keep comedian Bill Maher from speaking on their campus, leading media outlets framed it as a controversy about free speech rather than engaging with the much deeper critiques the students had about Maher's perpetuation of US imperialist, Orientalist discourse which fuels militarism abroad and racist violence at home. Yet, while students who protest imperialist discourse are characterized as a threat to free speech,** the actual threat to free speech in academia goes unchallenged **by leading media outlets.** October 8, 2015, at the Community College of Philadelphia, English professor Divya Nair spoke at a rally organized by students in protest of police recruiters on campus. The students and Professor Nair drew connections between colonialism and modern US policing; particularly the police tactic of recruiting poor people of color to act as the capitalist state's foot-soldiers to control poor Black and Brown communities. Later that day, school authorities suspended Professor Nair without pay, and they have since suspended three student group members who are facing disciplinary hearings. In the past few years there has been a noticeable campus crackdown on anti-colonialist expression.

#### Their protests are a display of collective powerlessness that panders to the converted but refuses to make specific demands of the power elite.

Doss 15 [(J. Pharoah Doss, black activist blogger and writer—graduate of Geneva College. His writing has appeared in The New Pittsburgh Courier, The Commonline Joural, Gutter Eloquence Magazine, The Shepherd, and Commonline/The E Journal.) “Protest conveys nothing without a demand” [January 28, 2015](http://newpittsburghcourieronline.com/2015/01/28/) http://newpittsburghcourieronline.com/2015/01/28/protest-conveys-nothing-without-a-demand

Frederick Douglass said, “Power concedes nothing without a demand.” **Douglass’ demand was specific, the abolishment of slavery.** The movement to end slavery even named themselves after their demand. They were called abolitionist. **What are the specific demands of modern protesters?** I remember during the Bush administration I asked an anti-war demonstrator, “Why are you protesting the war?” He said, “Because the president lied.” During the occupy Wall Street movement I met a participant. I asked the young lady, “What exactly are you protesting?” She said, “Corporate greed.” After a white police officer was not indicted by a grand jury for killing an unarmed black man in Ferguson, Missouri there was a rally in my home town of Pittsburgh. **The protesters carried signs that read: Black Lives Matter and People of Color Deserve Equality. The one sign that actually stated a demand said: Stop Racist Police Terror. What are these modern protesters asking power to abolish? More importantly does the power being protested have the power to abolish or change the circumstances?** Lying and greed are subjective matters of morality. Congressional staffers and elected officials assembled on the capital steps with their hands up. Their reason was to show solidarity with those protesting death caused by the police. But the only thing hands up can symbolize from elected officials and their staff is that they’re powerless to legislate morality. The signs held by those protesting the grand jury decision made basic statements no civilized person would oppose. **Of course black lives matter, of course people of color deserve equality, and who would not oppose the concept of racist police terror? But stopping racist … fill in the blank is not a demand that can be rectified by those in power. Power has limits**. Racism is a belief in superiority. It can be held by any race. Holding this belief is a problem for the holder alone. It becomes a social problem when the holder puts this belief into practice and discriminates against specific groups. But **the government has already legislated against discrimination. So what is the purpose of modern protest?** According to the editorial board of The Gazette, Western’s Daily Student Newspaper, the purpose of protest … in all of its various forms, has the same goal -- To create awareness of an issue. Really? I don’t think Douglass and the abolitionist sought to create awareness of the institution of slavery. Protest is defined by Dictionary.com as: An expression or declaration of objection, disapproval, or dissent, often in opposition to something a person is powerless to prevent or avoid. **When Trayvon Martin**, a black teen, **was shot and killed** by a Hispanic neighborhood watch volunteer in Florida the police did not arrest the volunteer. **People protested** across the country. **But they weren't raising awarness of neighborhood watch violence or racial profiling. They demanded the arrest of the shooter**. As demonstration grew, the demand grew, and power conceded. The shooter was arrested and tried for second degree murder. **Too often modern protests generalize grievances government can not legislate and corporate policy can not regulate.** They mistake activity for activism. They painfully demonstrate a collective powerlessness that the powerful are fully aware of without a public display. And if Frederick Douglass could address modern protesters he might say, “**Protest conveys nothing to power without a specific demand.”**

#### Free speech will ONLY BE USED BY THE WHITE MAJORITY – blacks fear hate speech and will stay home

**Fang:** Fang, Marina [Contributor, The Huffington Post] “Most College Students Want Free Speech on Campuses – But Not When It’s Hate Speech.” *Huffington Post.* April 2016. RP

**But students understand the limitations of free speech policies, especially with regard to discriminatory and offensive rhetoric. In recent months, many students of color have called on their college administrators to more fully address racism on campuses**, arguing that their campuses do not promote openness and diversity**. “Students do appear to distinguish controversial views from what they see as hate speech — and they believe colleges should be allowed to establish policies restricting language and certain behavior that are intentionally offensive to certain groups**,” the survey’s organizers wrote. Yet about 54 percent of students said that “the climate on campus prevents some people from saying what they believe because others might find it offensive.” Gallup, in collaboration with the Knight Foundation and the Newseum Institute, surveyed 3,000 students between the ages of 18 and 24 attending four-year colleges and universities in the United States. Amid a wave of incidents involving free speech and protests on college campuses, the survey’s organizers sought to gather students’ opinions about the First Amendment. **The survey noted that race plays a particular role in college students’ perceptions of First Amendment freedoms. For example, only 39 percent of the black students in the survey reported feeling less confident in the right to peacefully assemble, compared to 70 percent of white students. S**tudents are highly distrustful of the press. Nearly 60 percent of the students surveyed “have little or no trust in the press to report the news accurately and fairly,” and many expressed mixed opinions about the media’s coverage of campus protests. While the vast majority of students surveyed said that the press should generally have unrestricted access to campus protests, close to half said that in some cases, there can be reasons to bar the press, like if protesters think that the reporter may be biased, or whether “the people at the protest say they have a right to be left alone.” **The survey indicated that students are also concerned about the use of social media, with many noting that they feel that it can lead to uncivil and hateful discussions and that it can be easy to express opinions anonymously.** For example, Yik Yak, a popular social network on college campuses, allows anonymous postings. Many college students have reported seeing hateful Yik Yak posts, increasing pressure on the company to crack down on people who use the app to harass others.

#### Focusing on free speech is a convenient excuse to not focus on other problems on campus, such as Neo-Nazis or racists.

**Wise:** Wise, Tim [Timothy Jacob "Tim" Wise is an American anti-racism activist and writer. Since 1995, he has given speeches at over 600 college campuses across the U.S.] “Hate Speech Codes Will Not End Racism and Hate Crimes.” *Opposing Viewpoints.* 2007. RP

Sadly, perhaps the most important missing ingredient in the struggle to uproot racism, is white outrage: not at those who challenge racism (oh we've plenty of anger for them, typically), but rather, at those who are white like us, and whose racism we listen to with amusement, more so than indignation. **So, for example, notice how the free speech supporters wax eloquent about the importance of upholding Chira's right to be a racist prick, but they evince almost no hostility towards [him] and his message, beyond the obligatory throw-away line: "I completely reject his views, but will fight for his right to express them." In other words, they are far more worked up about the possibility (however slight it appears to be) that the Administration may sanction the Nazi, than they are about the fact that *there is a Nazi on their campus in the first place*. Which brings up the question: does Nazism not bother them that much? Or have they confused the valid concept of free speech with the completely invalid notion that one shouldn't even condemn racists,** out of some misplaced fealty to their rights (which notion of course relinquishes one's *own* right to speak back, and forcefully, to assholes like Chira)? **I long for the day when whites will get as angry at one of our number supporting bigotry and genocidal political movements, as we do at those who denounce the bigots and suggest that the right of students of color to be educated in a non-hostile environment is just as important as the right to spout putrid inanities. What's more, I long for the day when whites stage sit-ins to demand a more diverse and equitable college environment for students of color (which currently is threatened by rollbacks of affirmative action, for example), just as quickly as we stage them to defend free speech for fascists**, which, at Bellarmine at least, shows no signs of being endangered, so quick has the Administration been to defend Chira's liberties. In the final analysis, when whites take it upon ourselves to make racists and Nazis like Chira feel unwelcome at our colleges and in our workplaces, by virtue of making clear our own views in opposition to them, all talk of hate speech codes will become superfluous. Where anti-racists are consistent, persistent, and uncompromising, and where anti-racist principles are woven into the fabric of our institutions, there will be no need to worry about people like Chira any longer.

#### The Aff detracts from actually solving social problems by merely focusing on free speech – emprics confirm this has changed NOTHING

**Tillett-Saks:** Tillett-Saks, Andrew [Contributor, Counterpunch] “Neoliberal Myths.” *Counterpunch.* November 2013. RP

Every few years, protestors shout down a conservative speaker at an American University. Every few years, rancorous debate ensues. Every few years, the warring sides yell past one another; the opponents of the ‘shout-down’ uphold the sanctity of ‘free speech’ while the protestors decry the awful ‘real world impact’ of the conservative speaker’s message. In the wake of the Brown University shout-down of Ray Kelly, champion of the NYPD’s racist stop-and-frisk policy and racial profiling in general, the debate has resurfaced. Rather than talking past the anti-protestors’ arguments, they need to be addressed directly. **The prototypical argument in denouncing the protestors is not a defense of Ray Kelly’s racism. It is twofold: First, that a free-flowing discourse on the matter will allow all viewpoints to be weighed and justice to inevitably emerge victorious on its merits**. Second, that stopping a bigot from speaking in the name of freedom is self-defeating as it devolves our democratic society into tyranny. **The twofold argument against the protestors stems from two central myths of neoliberalism.** The argument for free discourse as the enlightened path to justice ignores that direct action protest is CounterPunch Magazine Tweet Share 0 Email Subscribe! 36 Pages, 6 Times a Year Search primarily responsible for most of the achievements we would consider ‘progress’ historically (think civil rights, workers’ rights, suffrage, etc.), not the free exchange of ideas. **The claim that silencing speech in the name of freedom is self-defeating indulges in the myth of the pre-existence of a free society in which freedom of speech must be preciously safeguarded, while ignoring the woeful shortcomings of freedom of speech in our society which must be addressed before there is anything worth protecting**. Critics of the protest repeatedly denounced direct action in favor of ideological debate as the path to social justice. “It would have been more effective to take part in a discussion rather than flat out refuse to have him speak,” declared one horrified student to the Brown Daily Herald. Similarly, Brown University President Christina Paxson labeled the protest a detrimental “affront to democratic civil society,” and instead advocated “intellectual rigor, careful analysis, and...respectful dialogue and discussion.” Yet the implication that masterful debate is the engine of social progress could not be more historically unfounded**. Only in the fairy tale histories of those interested in** discouraging social resistance **does ‘respectful dialogue’ play a decisive role in struggles against injustice. The eight-hour workday is not a product of an incisive question-and-answer session with American robber barons. Rather, hundreds of thousands of workers conducted general strikes during the nineteenth century, marched in the face of military gunfire at Haymarket Square in 1886, and occupied scores of factories in the 1930’s before the eight-hour work day became American law. Jim Crow was not defeated with the moral suasion of Martin Luther King, Jr.’s speeches. Rather, hundreds of thousands marched on Washington, suffered through imprisonment by racist Southern law enforcement, and repeatedly staged disruptive protests to win basic civil rights**. On a more international scale, Colonialism, that December 20, 2016 DAVE LINDORFF It Wasn’t the Russians: Hillary Lost Because She Blew Off Sanders and His Voters JOHN W. WHITEHEAD The Radical Jesus: How Would the Baby in a Manger Fare in the American Police State? CHRIS FLOYD An al Qaeda Christmas: the Touching Tale of How Hate Figures Became American Heroes ROBERT FISK Amnesia at the UN: the Massacres Samantha Power Conveniently Forgot to Mention JAN OBERG Syria’s Destruction: When Everybody Thinks Power and No One Thinks Peace ADAM BARTLEY Lessons in Witch- Hunting: a Warning somehow-oft-forgotten tyranny that plagued most of the globe for centuries, did not cease thanks to open academic dialogue. Bloody resistance, from Algeria to Vietnam to Panama to Cuba to Egypt to the Philippines to Cameroon and to many other countries, was the necessary tool that unlocked colonial shackles. Different specific tactics have worked in different contexts, but one aspect remains constant: **The free flow of ideas and dialogue, by itself, has rarely been enough to generate social progress.** It is not that ideas entirely lack social power, but they have never been sufficient in winning concessions from those in power to the oppressed. **Herein lies neoliberal myth number one—that a liberal free-market society will inexorably and inherently march towards greater freedom. To the contrary, direct action has always proved necessary**. Yet there are many critics of the protestors who do not claim Ray Kelly’s policies can be defeated with sharp debate. Instead, they argue that any protest in the name of freedom which blocks the speech of another is self-defeating, causing more damage to a free society by ‘silencing’ another than any potential positive effect of the protest. The protestors, the argument goes, tack society back to totalitarian days of censorship rather than forward to greater freedom. The protestors, however well intentioned, have pedantically thwarted our cherished liberal democracy by imposing their will on others.

#### Free speech for whom? Only the rich have the platform to use speech – the Aff just spreads neoliberal lies.

**Tillett-Saks:** Tillett-Saks, Andrew [Contributor, Counterpunch] “Neoliberal Myths.” *Counterpunch.* November 2013. RP

**The premise of this argument is neoliberal myth number two— that we live in a society with ‘freedom of speech’ so great it must be protected at all costs**. This premise stems from an extremely limited conception of ‘freedom of speech’. **Free speech should not be considered the mere ability to speak freely and inconsequentially in a vacuum, but rather the ability to have one’s voice heard equally. Due to the nature of private media and for the State Department and campaign finance in American society, this ability is woefully lopsided as political and economic barriers abound. Those with money easily have their voices heard through media and politics, those without have no such freedom. There is a certain irony (and garish privilege) of upper-class Ivy Leaguers proclaiming the sanctity of a freedom of speech so contingent upon wealth and political power**. There is an even greater irony that the fight for true freedom of speech, if history is any indicator, must entail more direct action against defenders of the status quo such as Ray Kelly. **To denounce such action out of indulgence in the neoliberal myth of a sacrosanct, already existing,** freedom of speech is to condemn the millions in this country with no meaningful voice to eternal silence.

#### The allowance of hate speech shatters coalition building -- it lets dominant groups experience cognitive dissonance to minorities

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

The effect on non-target-group members is also of constitutional dimension. **Associational and other liberty interests of whites are cur- tailed by an atmosphere rife with racial hatred**.91 In addition, the process of dissociation can affect their mental health. **Dominant-group members who rightfully, and often angrily, object to hate propaganda share a guilty secret: their relief that they are not themselves the tar- get of the racist attack. While they reject the Ku Klux Klan, they may feel ambivalent relief that they are not African-American, Asian, or Jewish**. Thus they are drawn into unwilling complacency with the Klan, spared from being the feared and degraded thing. **Just as when we confront human tragedy - a natural disaster, a plane crash - we feel the blessing of the fortunate that distances us from the victims, the presence of racist hate propaganda distances right-thinking dominant-group members from the victims, making it harder to achieve a sense of common humanity.** **Similarly, racist propaganda forces victim-group members to view all dominant-group members with suspicion**.92 It **forces well-meaning dominant-group members to use kid-glove care in dealing with outsiders.93 This is one reason why social relations across racial lines are so rare in America.**

### A2 Underground

#### Underground movements are less effective than those out in the open.

**Parekh:** Parekh, Bhikhu “Is There a Case for Banning Hate Speech?” *Cambridge University Press.* 2012.

It is sometimes argued that banning hate speech drives extremist groups under- ground and leaves us no means of knowing who they are and how much support they enjoy. It also alienates them from the wider society, even makes them more detennined. and helps them recruit those attracted by the allure of forbidden fruit. This is an important argument and its force should not be underestimated. How- eyer, it has its limits. **A ban on hate speech might drive extremist groups underground, but it also persuades their moderate and law-abiding members to dissociate them- selves from these groups.** **When extremist groups go underground, they are denied the oxygen of publicity and the aura of public respectability. This makes their oper- ations more difficult and denies them the opportunity to link up with other similar groups and recruit their members. While the ban might alienate extremist groups, it has the compensating advan- tage of securing the enthusiastic commitment and support of their target groups**. Besides, beyond a certain point, alienation need not be a source of worry. Some religious groups are alienated from the secular orientation of the liberal state, inst as the communists and polyamoronsly inclined persons bitterly resent its commitment (respectively) to market economy and rnonogamy. We accept such forms of alien- ation as inherent in collective life and do not seek to redress them by abandoning the liberal state. **The ban might harden the determination of some, but it is also likely to weaken that of those who seek respectability and do not want to be associated with ideas and groups considered so disreputable** as to be banned, or who are deterred by the cost involved in supporting them. There is the lure of the prohibited, but there is also the attraction of the respectable.

#### Psychological evidence shows hate speech damages people permanently and is WORSE THAN PHYSICAL HARM– it needs to be banned

**Rosenbaum:** Rosenbaum, Thane [Contributor, The Daily Beast] “Should Neo-Nazis Be Allowed Free Speech?” *The Daily Beast.* January 2014. RP

-Emotional damage > physical damage on longevity

-Answers counterspeech and underground – people experience verbal abuse more

While what is happening in France and Israel is wholly foreign to Americans, perhaps it’s time to consider whether these and other countries may be right. **Perhaps America’s fixation on free speech has gone too far. Actually, the United States is an outlier among democracies in granting such generous free speech guarantees.** Six European countries, along with Brazil, prohibit the use of Nazi symbols and flags. Many more countries have outlawed Holocaust denial. Indeed, even encouraging racial discrimination in France is a crime. In pluralistic nations like these with clashing cultures and historical tragedies not shared by all, mutual respect and civility helps keep the peace and avoids unnecessary mental trauma. **Yet, even in the United States, free speech is not unlimited. Certain proscribed categories have always existed—libel, slander and defamation, obscenity, “fighting words,” and the “incitement of imminent lawlessness”—where the First Amendment does not protect the speaker, where the right to speak is curtailed for reasons of general welfare and public safety**. There is no freedom to shout “fire” in a crowded theater. Hate crime statutes exist in many jurisdictions where bias-motivated crimes are given more severe penalties. In 2003, the Supreme Court held that speech intended to intimidate, such as cross burning, might not receive First Amendment protection. Yet, the confusion is that in placing limits on speech we privilege physical over emotional harm. Indeed, we have an entire legal system, and an attitude toward speech, that takes its cue from a nursery rhyme: “Stick and stones can break my bones but names can never hurt me.” All of us know, however, and despite what we tell our children, names do, indeed, hurt. **And recent studies in universities such as Purdue, UCLA, Michigan, Toronto, Arizona, Maryland, and Macquarie University in New South Wales, show, among other things, through brain scans and controlled studies with participants who were subjected to both physical and emotional pain, that emotional harm is equal in intensity to that experienced by the body, and is even more long-lasting and traumatic. Physical pain subsides; emotional pain, when recalled, is relived. Pain has a shared circuitry in the human brain, and it makes no distinction between being hit in the face and losing face (or having a broken heart) as a result of bereavement, betrayal, social exclusion and grave insult. Emotional distress can, in fact, make the body sick. Indeed, research has shown that pain relief medication can work equally well for both physical and emotional injury. We impose speed limits on driving and regulate food and drugs because we know that the costs of not doing so can lead to accidents and harm. Why should speech be exempt from public welfare concerns when its social costs can be even more injurious? In the marketplace of ideas, there is a difference between trying to persuade and trying to injure.** One can object to gays in the military without ruining the one moment a father has to bury his son; neo-Nazis can long for the Third Reich without re-traumatizing Hitler’s victims; one can oppose Affirmative Action without burning a cross on an African-American’s lawn. Of course, everything is a matter of degree. Juries are faced with similar ambiguities when it comes to physical injury. No one knows for certain whether the plaintiff wearing a neck brace can’t actually run the New York Marathon. We tolerate the fake slip and fall, but we feel absolutely helpless in evaluating whether words and gestures intended to harm actually do cause harm. Jurors are as capable of working through these uncertainties in the area of emotional harms as they are in the realm of physical injury.Free speech should not stand in the way of common decency. **No right should be so freely and recklessly exercised that it becomes an impediment to civil society, making it so that others are made to feel less free, their private space and peace invaded, their sensitivities cruelly trampled upon.**

#### Speech going underground is much better than it being out in the open – people openly saying racial slurs normalizes violence.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “Pressure Valves and Blooded Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulations.” *California Law Review.* Volume 84. July 1994. RP

**The pressure valve argument holds that rules prohibiting hate speech are unwise because they increase the danger racism poses to minorities. Forcing racists to bottle up their dislike of minority group members means that they will be more likely to say or do something hurtful later.** Free speech thus functions as a pressure valve, allowing tension to dissipate before it reaches a dangerous level. 1 Pressure valve proponents argue that if minorities understood this, they would oppose antiracism rules. **The argument is paternalistic; it says we are denying you what you say you want, and we are doing it for your own good**. The rules, which you think will help you, will really make matters worse. If you knew this, you would join us in opposing them. Hate speech may make the speaker feel better, at least temporarily, but it does not make the victim safer. **Quite the contrary, the psychological evidence suggests that permitting one person to say or do hateful things to another increases, rather than decreases, the chance that he or she will do so again in the future**. 2 Moreover, others may believe it is permissible to follow suit. 3 **Human beings are not mechanical objects**. Our behavior is more complex than the laws of physics that describe pressure valves, tanks, and the behavior of a gas or liquid in a tube. **In particular, we use symbols to construct our social world, a world that contains categories and expecta- tions for "black," "woman," "child," "criminal," "wartime enemy," and so on.**5 4 Once the roles we create for these categories are in place, they govern the way we speak of and act toward members of those categories in the future.55 Even simple barnyard animals act on the basis of categories. Poultry farmers know that a chicken with a single speck of blood will be pecked to death by the others." With chickens, of course, the categories are neural and innate, functioning at a level more basic than language. **But social science experiments demonstrate that the way we categorize others affects our treatment of them**. An Iowa teacher's famous "blue eyes/brown eyes" experiment showed that even a one-day assignment of stigma can change behavior and school performance.57 **At Stanford University, Phillip Zimbardo assigned students to play the roles of prisoner and prison guard, but was forced to discontinue the experiment when some of the participants began taking their roles too seriously.** 8 And Diane Sculley's interviews with male sexual offenders showed that many did not see themselves as offenders at all. In fact, research suggests that exposure to sexually violent pornography increases men's antagonism toward women and intensifies rapists' belief that their victims really welcomed their attentions. At Yale University, Stanley Milgram showed that many members of a university community could be made to violate their conscience if an authority figure invited them to do so and assured them this was permissible and safe**." The evidence, then, suggests that allowing persons to stigmatize or revile others makes them more aggressive, not less so. Once the speaker forms the category of deserved-victim, his or her behavior may well con- tinue and escalate to bullying and physical violence. Further, the studies appear to demonstrate that stereotypical treatment tends to generalize- what we do teaches others that they may do likewise.** Pressure valves may be safer after letting off steam; human beings are not.

#### Empirics confirm that speech codes increase awareness about the dangers of hate speech – this is uniquely valuable and avoids it being driven underground

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

The practical experiences with the Wisconsin rule discussed above suggest that some of the most serious concerns of the critics of regulation-those related to suppression of speech and misap- plication, for example-have not been realized. Questions remain, however, as to the effectiveness of hate speech rules for purposes of combating campus discrimination and discriminatory attitudes, or for assuring equality of educational opportunity. Some com- mentators have asserted that regulations are inadequate to address the underlying attitudes manifested in hate speech, and that the most effective antidote to discriminatory harassment is not rules, but some combination of education and more speech. These points are well-taken: educational efforts to address discrimination are certainly needed, and may be more effective than a regulatory approach; more speech may indeed be the best counter to discriminatory speech. **It does not follow, however, that a rule regulating discriminatory speech is an ineffective means to these ends. The Wisconsin experience illustrates the value of adopt- ing such a rule as part of more extensive educational and pro- grammatic efforts to deal with discrimination and harassment in the university environment. A rule prohibiting discriminatory speech is useful and effective as an additional response to institutional discrimination in several ways. First, the adoption of a rule, and the debate and discussion accompanying the process of adopting it, provide substantial ed- ucational benefits by focusing public attention on the problem of discriminatory harassment. Second, a rule can be an exercise of institutional speech**, a description of conduct that the university regards as harmful and inappropriate, and an expression of the institution's commitment to do something about it. The increased public awareness and the demonstration of university concern reflected by the adoption of a rule enhance other efforts to eliminate discrimination. Further, since most hate speech occurs under circumstances which do not allow for educational or speech responses**, a rule affords an additional opportunity to reach and educate individual students. At Wisconsin, none of the incidents leading to discipli- nary action under the hate speech rule occurred in classrooms or other forums for debate**; all took place in social or dormitory settings.5 9 In none of the cases did the use of abusive epithets lead to further opportunity for speech. In several, the result was an angry and potentially violent confrontation, while in others the victim was silent.60 As these situations illustrate, racial or discrim- inatory epithets, name-calling, and similar abusive speech do not afford opportunities for debate. More often, they cut it off, leaving the victim without an opportunity to respond.6' **The availability of the rule limiting speech provides a means of responding to a discriminatory problem, redress for the victims, and an occasion for educating the harassing individual.**

#### Bans on hate speech have a positive spillover – they lead to other policies eradicating discrimination.

**Parekh:** Parekh, Bhikhu “Is There a Case for Banning Hate Speech?” *Cambridge University Press.* 2012.

-Study of Europe

-Bans not isolated – caused educational campaigns too

**It is sometimes argued that a ban on hate speech can easily become an end it itself and an excuse to avoid well-conceived antidiscrimination policies**. Although this can happen, as arguably it has in France, there is no obvious reason why it should. **As the cases of Britain, Netherlands, Germany, and Australia show, the ban on hate speech has gone hand in hand with a wider campaign to address the causes of racism, sexism, or homophobia by pressing for a well-worked-out strategy to tackle discrimination and disadvantage. This is not accidental and has a complex internal logic. Once people realize that ban on hate speech has made only a marginal difference in their lives, they look for the deeper causes and see the need for an antidiscrimination struggle in other areas of life. The ban on hate speech alerts the target groups to other goals to aim at and gives it the confidence to fight for them by actively participating in public life.**

#### Speech codes don’t drive harmful speech underground—they educate about the harms of hate speech and prevent racist images that construct social reality.

**The ADL:** Anti-Defamation League [Organization dedicated to ending defamation and activism supporting this goal] “Responding to Hate Speech on Campus.” No date. RP

**Hateful speech is not only a symptom of subordination, but can also be its source**. The repetition of certain images and words reinforces ethnic and cultural imagery. Since childhood, we are all exposed to a plethora of stereotypes, stock characters, stories, narratives and plots in which women are ornaments and minorities are happy-go-lucky, stupid or licentious. **Society uses such images to create a social reality in which minorities are always at risk; one in which each new slight or injury reverberates against a history of similar ones**. After years of repetition, offenses are aimed as much at groups as at individuals. Some acts, such as painting a swastika on a Jewish student center or burning a cross on the lawn of an African-American residence, gain a power that most insults directed at individuals lack -- the power to marginalize/victimize entire groups of people. Words create characters, images, expectations and deeply rooted subconscious assumptions. Abusive words aimed at aspects of a person's core identity can seriously wound and particularly damage young people in the process of figuring our their own identity during college. The federal and state court decisions regarding university and college speech/conduct codes suggest that these codes need to be very carefully drafted in order to pass judicial muster. Whenever someone commits a hate crime or utters a prejudicial remark, it harms the victim and potentially terrorizes an entire group. Therefore, it is important to realize that there are both advantages and disadvantages to limiting speech. The arguments against campus speech codes are better understood because of court decisions. When these codes use broad and vague phrases, they limit not only destructive language, but also language that enjoys constitutional protection. It is practically impossible to draft a speech code that cannot be construed against speech no one means to ban. As a result, many institutions of higher education have dropped their existing codes or abandoned their efforts to adopt one. **However, despite the problems speech codes raise, there are some advantageous goals underlying the attempts to develop codes barring derogatory and hurtful epithets. These efforts seek to serve educational purposes and provide an expression of an institution's commitment to the defense of victims of hatred. While the speech-code issue will continue to be a battlefield in the culture wars between left and right on campus, it is necessary that presidents and administrators, with or without the aid of campus speech codes, have the willingness to take strong and directive stands when issues of bigotry arise.**

#### Regulation doesn’t drive hate underground but cures it instead – people change their attitudes.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “The Neoconservative Case Against Hate-Speech Regulation-Lively, D'Souza, Gates, Carter, and the Toughlove Crowd.” *Vanderbilt Law Review.* November 1994. RP

**A further argument one hears from the anti-rule camp is that hate speech should not be driven underground, but rather allowed to remain out in the open. The racist who one does not know is far more dangerous than the one who one does. Moreover, on a college campus, incidents of overt racism or sexism can serve as useful spurs for discussion and institutional self-examination**. Carter, for example, writes that regulating racist speech will leave minorities no better off than they are now, while screening out "hard truths about the way many white people look at . . . us." n56 D'Souza echoes this argument, but with a reverse twist, when he points out that the hate-speech crusaders are missing a valuable opportunity. When racist graf- fiti or hateful fraternity parties proliferate, minorities should reflect on the possibility that this may signal something basically wrong with affirmative action. n57 Instead of tinkering futilely with the outward signs of malaise, we ought to deal directly with the problem itself. n58 An editor of Southern California Law Review argues that antiracism rules are tantamount to "sweeping the problem under the rug," whereas "keeping the problem in the public spotlight . . . enables members [of the university community] to attack it when it surfaces." n59 How should we see the bellwether argument? In one respect, the argument does make a valid point. All other things being equal, the racist who is known is less dangerous than the one who is not. n60 **What the argument ignores is that** there is a third alternative, namely the racist who is cured**, or at least deterred by rules, policies, and official state- ments so as to no longer exhibit the behavior he or she once did. Since most conservatives believe that rules and penal- ties change conduct (indeed they are among the strongest proponents of heavy penalties for crime), the possibility that campus guidelines against hate speech and assault would decrease those behaviors ought to be conceded.** n61 Of course, the conservative may argue that regulation has costs of its own-something even the two of us would concede-but this is a different argument from the bellwether one.

#### Regulations cause more open discussion than doing nothing – there isn’t any tradeoff.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “The Neoconservative Case Against Hate-Speech Regulation-Lively, D'Souza, Gates, Carter, and the Toughlove Crowd.” *Vanderbilt Law Review.* November 1994. RP

**A further neoconservative objection is that silencing the racist through legislation might deprive the campus com- munity of the "town hall" opportunity it has to discuss and analyze issues of race when incidents of racism come to light**. n63 **But campuses could hold those meetings and discussions anyway. The rules are not likely to suppress hate speech entirely; even with them in place, there will continue to be some number of incidents of racist speech** and behav- ior. **The difference is that now there will be the possibility of campus disciplinary hearings, which are even more likely to instigate the "town hall" discussions the argument assumes are desirable**. Because the bellwether argument ignores that rules will have at least some edifying effect and that there are other ways of having campuswide discussions short of allowing racial confrontation to flourish, the argument appears to deserve little weight.

### A2 Pressure Valve

#### Psychological evidence shows hate speech damages people permanently and is WORSE THAN PHYSICAL HARM– it needs to be banned

**Rosenbaum:** Rosenbaum, Thane [Contributor, The Daily Beast] “Should Neo-Nazis Be Allowed Free Speech?” *The Daily Beast.* January 2014. RP

-Emotional damage > physical damage on longevity

-Answers counterspeech and underground – people experience verbal abuse more

While what is happening in France and Israel is wholly foreign to Americans, perhaps it’s time to consider whether these and other countries may be right. **Perhaps America’s fixation on free speech has gone too far. Actually, the United States is an outlier among democracies in granting such generous free speech guarantees.** Six European countries, along with Brazil, prohibit the use of Nazi symbols and flags. Many more countries have outlawed Holocaust denial. Indeed, even encouraging racial discrimination in France is a crime. In pluralistic nations like these with clashing cultures and historical tragedies not shared by all, mutual respect and civility helps keep the peace and avoids unnecessary mental trauma. **Yet, even in the United States, free speech is not unlimited. Certain proscribed categories have always existed—libel, slander and defamation, obscenity, “fighting words,” and the “incitement of imminent lawlessness”—where the First Amendment does not protect the speaker, where the right to speak is curtailed for reasons of general welfare and public safety**. There is no freedom to shout “fire” in a crowded theater. Hate crime statutes exist in many jurisdictions where bias-motivated crimes are given more severe penalties. In 2003, the Supreme Court held that speech intended to intimidate, such as cross burning, might not receive First Amendment protection. Yet, the confusion is that in placing limits on speech we privilege physical over emotional harm. Indeed, we have an entire legal system, and an attitude toward speech, that takes its cue from a nursery rhyme: “Stick and stones can break my bones but names can never hurt me.” All of us know, however, and despite what we tell our children, names do, indeed, hurt. **And recent studies in universities such as Purdue, UCLA, Michigan, Toronto, Arizona, Maryland, and Macquarie University in New South Wales, show, among other things, through brain scans and controlled studies with participants who were subjected to both physical and emotional pain, that emotional harm is equal in intensity to that experienced by the body, and is even more long-lasting and traumatic. Physical pain subsides; emotional pain, when recalled, is relived. Pain has a shared circuitry in the human brain, and it makes no distinction between being hit in the face and losing face (or having a broken heart) as a result of bereavement, betrayal, social exclusion and grave insult. Emotional distress can, in fact, make the body sick. Indeed, research has shown that pain relief medication can work equally well for both physical and emotional injury. We impose speed limits on driving and regulate food and drugs because we know that the costs of not doing so can lead to accidents and harm. Why should speech be exempt from public welfare concerns when its social costs can be even more injurious? In the marketplace of ideas, there is a difference between trying to persuade and trying to injure.** One can object to gays in the military without ruining the one moment a father has to bury his son; neo-Nazis can long for the Third Reich without re-traumatizing Hitler’s victims; one can oppose Affirmative Action without burning a cross on an African-American’s lawn. Of course, everything is a matter of degree. Juries are faced with similar ambiguities when it comes to physical injury. No one knows for certain whether the plaintiff wearing a neck brace can’t actually run the New York Marathon. We tolerate the fake slip and fall, but we feel absolutely helpless in evaluating whether words and gestures intended to harm actually do cause harm. Jurors are as capable of working through these uncertainties in the area of emotional harms as they are in the realm of physical injury.Free speech should not stand in the way of common decency. **No right should be so freely and recklessly exercised that it becomes an impediment to civil society, making it so that others are made to feel less free, their private space and peace invaded, their sensitivities cruelly trampled upon.**

#### Other countries and social science disprove the pressure valve argument.

**Delgado and Stefancic:** Richard Delgado and Jean Stefancic [Delgado is Charles Inglis Thomson Professor of Law, University of Colorado. J.D., U. Cali- fornia-Berkeley, 1974. Stefancic is theTechnical Services Librarian, University of San Francisco School of Law. M.L.S., Simmons College, 1963; M.A., University of San Francisco, 1989. “FOUR OBSERVATIONS ABOUT HATE SPEECH.” *Wake Forest Law Review.* Volume 44. 2009. RP

**If the harms of hate speech are sobering, what lies on the other side? What happens to the hate speaker forced to hold things in? Will he or she suffer psychological injury**, depression, nightmares, drug addiction, and a blunted self-image? Diminished pecuniary and personal prospects? Will hate-speech regulation set up the speaker’s group for extermination, seizure of ancestral lands, or anything comparable? The very possibility seems far-fetched. **And, indeed, regimes, such as Europe’s and Canada’s, that criminalize hate speech exhibit none of these ills. Speech and inquiry there seem as free and uninhibited as in the United States, and their press just as feisty as our own. What about harm to the hate speaker? The individual who holds his or her tongue for fear of official sanction may be momentarily irritated. But “bottling it up” seems not to inflict serious psychological or emotional damage. Early in the debate about hate speech, some posited that a prejudiced individual forced to keep his impulses in check might become more dangerous as a result. By analogy to a pressure valve, he or she might explode in a more serious form of hate speech or even a physical attack on a member of the target group.** **But studies examining this possibility discount it. Indeed, the bigot who expresses his sentiment aloud is apt to be more dangerous, not less, as a result.** The incident “revs him up” for the next one, while giving onlookers the impression that baiting minorities is socially acceptable, so that they may follow suit. **A recently developed social science instrument, the Implicit Association Test (“IAT”), shows that many Americans harbor measurable animus toward racial minorities**.96 Might it be that hearing hate speech, in person or on the radio, contributes to that result?97

#### Speech going underground is much better than it being out in the open – people openly saying racial slurs normalizes violence.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “Pressure Valves and Blooded Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulations.” *California Law Review.* Volume 84. July 1994. RP

**The pressure valve argument holds that rules prohibiting hate speech are unwise because they increase the danger racism poses to minorities. Forcing racists to bottle up their dislike of minority group members means that they will be more likely to say or do something hurtful later.** Free speech thus functions as a pressure valve, allowing tension to dissipate before it reaches a dangerous level. 1 Pressure valve proponents argue that if minorities understood this, they would oppose antiracism rules. **The argument is paternalistic; it says we are denying you what you say you want, and we are doing it for your own good**. The rules, which you think will help you, will really make matters worse. If you knew this, you would join us in opposing them. Hate speech may make the speaker feel better, at least temporarily, but it does not make the victim safer. **Quite the contrary, the psychological evidence suggests that permitting one person to say or do hateful things to another increases, rather than decreases, the chance that he or she will do so again in the future**. 2 Moreover, others may believe it is permissible to follow suit. 3 **Human beings are not mechanical objects**. Our behavior is more complex than the laws of physics that describe pressure valves, tanks, and the behavior of a gas or liquid in a tube. **In particular, we use symbols to construct our social world, a world that contains categories and expecta- tions for "black," "woman," "child," "criminal," "wartime enemy," and so on.**5 4 Once the roles we create for these categories are in place, they govern the way we speak of and act toward members of those categories in the future.55 Even simple barnyard animals act on the basis of categories. Poultry farmers know that a chicken with a single speck of blood will be pecked to death by the others." With chickens, of course, the categories are neural and innate, functioning at a level more basic than language. **But social science experiments demonstrate that the way we categorize others affects our treatment of them**. An Iowa teacher's famous "blue eyes/brown eyes" experiment showed that even a one-day assignment of stigma can change behavior and school performance.57 **At Stanford University, Phillip Zimbardo assigned students to play the roles of prisoner and prison guard, but was forced to discontinue the experiment when some of the participants began taking their roles too seriously.** 8 And Diane Sculley's interviews with male sexual offenders showed that many did not see themselves as offenders at all. In fact, research suggests that exposure to sexually violent pornography increases men's antagonism toward women and intensifies rapists' belief that their victims really welcomed their attentions. At Yale University, Stanley Milgram showed that many members of a university community could be made to violate their conscience if an authority figure invited them to do so and assured them this was permissible and safe**." The evidence, then, suggests that allowing persons to stigmatize or revile others makes them more aggressive, not less so. Once the speaker forms the category of deserved-victim, his or her behavior may well con- tinue and escalate to bullying and physical violence. Further, the studies appear to demonstrate that stereotypical treatment tends to generalize- what we do teaches others that they may do likewise.** Pressure valves may be safer after letting off steam; human beings are not.

### A2 Reverse Enforcement

#### Meta studies disprove reverse enforcement -- stopping hate speech outweighs since it harms minorities

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “Pressure Valves and Blooded Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulations.” *California Law Review.* Volume 84. July 1994. RP

-Meta study

-Outweighs few isolated examples; all of FBI data

**A second paternalistic argument is that enactment of hate speech rules is sure to hurt minorities because the new rules will be applied against minorities themselves**.61 A vicious insult hurled by a white person to a black will go unpunished, but even a mild expression of exasperation by a black motorist to a police officer or by a black student to a professor, for example, will bring harsh sanctions. The argument is plausibile because certain authorities are racist and dislike blacks who speak out of turn, and because a few incidents of blacks charged with hate speech for innocuous behavior have occurred. **Nadine Strossen, for example, asserts that in Canada, shortly after the Supreme Court upheld a federal hate speech code, prosecutors began charging blacks with hate offenses. But the empirical evidence does not suggest that this is the pattern, much less the rule. Police and FBI reports show that hate crimes are com- mitted much more frequently by whites against blacks than the reverse. Statistics compiled by the National Institute Against Violence and Prejudice confirm what the police reports show, that a large number of blacks and other minorities are victimized by racist acts on campus each year.' Moreover, the distribution of enforcement seems to be consistent with com- mission of the offense. Although an occasional minority group member may be charged with a hate crime or with violating a campus hate speech code, these prosecutions seem rare**.6 5 Racism, of course, is not a one-way street; some minorities have harassed and badgered whites. Still, the reverse-enforcement objection seems to have little validity in the United States. A recent study of the international aspects of hate speech regulation showed that in repressive societies, such as South Africa and the former Soviet Union, laws against hate speech have indeed been deployed to stifle dissenters and members of minority groups.6 6 Yet, this has not happened in more progressive coun- tries.67 **The likelihood that officials in the United States would turn** hate speech laws into weapons against minorities seems remote.

#### Codes don’t backfire – they’re enforced against white racists mostly – Wisconsin codes prove.

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

**A further concern expressed about the adoption of speech rules was that they would be used to repress the speech of the very groups they were meant to protect. Referring to historical civil rights abuses involving members of racial minorities, opponents of discriminatory speech rules have argued that such regulations can too easily be used against minorities expressing unpopular opi- nions.5 5 There is, however, nothing in the experiences with Wis- consin's rule to show that this has occurred in practice**. Although three complaints were brought against minority group members or females, only one was found to be within the scope of the rule. **In contrast, white males were named as the alleged violators in fifteen of the complaints filed under the rule.5 6 In the ten cases in which discipline was imposed, nine of the students disciplined were white males, and one was a white female. In all ten, the person harassed was female or a minority group member.** Thus, the fear of abusing the rule to the detriment of those intended to be protected has proved unfounded in the cases at Wisconsin.

#### Wisconsin is a good example—universities model from it

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

To assess the policy implications of adopting university rules regulating hate speech, it is necessary to understand both the context in which regulatory efforts arose, and the nature of the rules that emerged following public debate and controversy over these efforts. **A wave of racist incidents on college campuses provided the primary impetus for the adoption of regulations to limit discriminatory speech. The University of Wisconsin System's rule, for example, was approved following a series of highly publicized episodes of racist conduct involving university students**: A fraternity placed a large cardboard caricature of a black manon its lawn to announce a "Fiji Island" party;4 another fraternity held a party featuring a "Harlem room," in which it served watermelon punch and fried chicken, and students wore black- face;5 racist name-calling led to an altercation at a third fraternity house.6 **Many other universities across the country experienced similar events, and many-like the University of Wisconsin System-responded with policies or rules prohibiting racist or discrim- 7 inatory harassment.**

#### Reverse enforcement is non-unique – racist government will just be racist in other ways too – public backlash checks.

**Parekh:** Parekh, Bhikhu “Is There a Case for Banning Hate Speech?” *Cambridge University Press.* 2012.

**The danger that the ban can be misused is real, but that does not undermine the case for it. It is interesting that the African National Congress, which had suffered much from such an abuse under the apartheid regime, continued with the ban on hate speech in a suitably revised form on establishing a democratic South Africa. Many laws, including those relating to public order and national security, are open to abuse, but that does not mean that we should dispense with them. Furthermore, repressive governments can easily invoke all kinds of familiar reasons to justify suppression of dissenting movements and minority protests. No doubt a ban on hate speech provides them with one legitimizing reason, but it is not the only one and its absence would not make any difference to their actions.** Determined governments are able to misuse the ban because it is formulated in vague terms and applied in a biased manner, and it is this that needs to be addressed. **Given that the general point of the ban is to protect vulnerable groups against intimidation and violence, we could demand a more stringent judicial scrutiny when it is used for opposite purposes. An independent judiciary, a representative legislature, a popularly accountable government, a free press, and so on are our best protection against misuse of laws, including the ban on hate speech. Once these institutions are established, a ban has a good chance of success. If they are not, the ban is open to abuse as indeed are all other laws**. We cannot, therefore, discuss it in the abstract or in isolation from the wider political institutions and culture.

#### Britain proves no reverse enforcement – laws did combat discrimination.

**Parekh:** Parekh, Bhikhu “Is There a Case for Banning Hate Speech?” *Cambridge University Press.* 2012.

**I might take the British experience to indicate how the ban on hate speech has worked in practice. Between 1987, when the Public Order Act 1986 Act came into effect, and 2004, there were sixty-five prosecutions for incitement to racial hatred.** On three occasions, the Attorney-General had declined to give his consent to prosecution on grounds of public interest. **Of the sixty-five prosecutions, forty-four resulted in convictions, twenty-six of these resulted in immediate sentences of imprisonment of between three months and two years, five in suspended prison sentences, and the rest in conditional discharge, fine, or community service.** Five prosecutions resulted in acquittal, six were dropped by the prosecution for various reasons, and ten had other outcomes such as that the defendants were judged medical unfit or had absconded or died. **These statistics show that the ban, if carefully drafted, can stand up in a court of law, has teeth, and can act as a check on hate speech.**

#### Reverse enforcement isn’t a reason to reject bans– all laws can be abused – legal systems check

**Parekh:** Parekh, Bhikhu “Is There a Case for Banning Hate Speech?” *Cambridge University Press.* 2012.

**Some critics of the ban argue that law is a blunt instrument and cannot define hate speech precisely enough to avoid two important dangers.** First, it is unlikely to stand up in a court of law and not only brings the law into disrepute, but also disappoints those whom it claims to help. Second, it could be misused by the government to suppress legitimate dissent and struggle for human rights and even to whip up fears of national disintegration and social disharmony for which minorities are blamed. **Such abuses have occurred in Sri Lanka, apartheid South Africa, the erstwhile Soviet Union, and even in such democracies as India and Israel.** This is a powerful argument whose force advocates of the ban do not always fully appreciate. **However, it is not as fatal as is sometimes made out. It does not challenge the ban in principle, but rather its practicability. Law is a blunt instrument because it is necessarily articulated in terms of general categories, which cannot be sharply defined and distinguished, and because it cannot deal with the nuances and complexities of unique situations. This is true of all laws and is not unique to one banning hate speech. Because we cannot live without laws, we cope with their bluntness in three important ways. First, we make them precise by defining the relevant concepts as sharply and unambiguously as humanly possible.** The precision is never absolute and incontrovertible but adequate and reasonably workable. This is why hate speech must be defined with great care and distinguished from such vague expressions as offensive, hurtful, and distressing remarks, as I suggested earlier. **Secondly, we entrust the enforcement of the criminal law to public authorities and expect them to initiate prosecutions with due regard to their likely results and the public interest. Thirdly, we rely on judges to apply the laws and adapt it to the complex circumstances of each case with sensitivity and good judgment**. The resulting case law elucidates the law’s key concepts, explores the full range of its meaning and implications, and builds up an appropriate tradition of discourse on it. The First Amendment jurisprudence in the United States shows how the Supreme Court has wrestled with the conception of speech, at times rendered conflicting judgments, and over time built up a broad but not unquestioned consensus on what constitutes speech. We should expect the same in relation to hate speech.

### A2 Counterspeech

#### Counterspeech is empirically not used, still causes psychological violence and takes time from students

**Brown:** Brown, Alexander [Lecturer at the University of East Anglia] “Hate Speech Law: A Philosophical Examination.” *Routledge.* 2015. RP

-Barely ever used

-Internalized hatred if they don’t speak out

-Time to speak out is substantial

**More generally, there is some evidence to suggest that barriers to counterspeech are the greatest for victims of face-to-face hate speech** (e.g., the use of racial insults, slurs, or derogatory epithets directed at specific individuals in person). As mentioned in Ch. 3 [3.1], in her study of hate speech **Nielsen found that the most common reaction to racist hate speech on the part of those targeted by it is to ignore the remark and simply leave the situation. Only 28% of people of color, for example, reported making verbal responses to racist speech** (Nielsen 2002: 277), and even then 'only when they ate in situations where they felt relatively safe, such as a crowded public area’ (ibid.). **This finding undermines the plausibility of the claim that counterspeech by the victims of face-to-face hate speech is a no less effective but less restrictive alternative to hate speech law; at least, that is, when it comes to instantaneous, face-to-face counterspeech. This claim overlooks a powerful psychological mechanism controlling human responses to conflict situations. Nielsen reports that part of the problem is fear that speaking back may provoke yet more hate abuse or even violence** (ibid.). T**his is certainly the reported experience of Matsuda, who in the late 1980s received hate mail as a consequence of speaking M public about her views on freedom of expression and hate speech, and subsequently made a decision not to publish her ideas in the popular press for fear of receiving threats against her person** (remarks in Borovoy et al. 1988-1989, 3631. Similarly, there is evidence to suggest that this fear has led some complainants in Australia to withdraw complaints about hate speech even under the private processes of dispute resolution established by hate speech legislation (e.g., Gelber 2002: 851. **There is also a psychological cost that might be borne by the victims of hate speech if society expects them to take sole responsibility for tackling the problem. If they are made to feel that it is their duty or obligation to engage in counterspeech, what happens when they do not? Will this become yet another (illegitimate) source of shame or self-loathing?** **Another part of the problem is that dealing with the effects of hate speech can be time consuming, reducing the time that someone might have to actually engage in counterspeech.** This is the reported experience of the writer Amanda Hess, who suffered online harassment and intimidation based on her gender. 'I've spent countless hours over the past four years logging the online activity of one particularly committed cyberstalker just in case' (Hess 2014). At this stage, it might be pointed out that using legal restrictions to combat hare speech also sucks up a lot of time. The victims of hate speech may need to expend a considerable amount of time as complainants, plaintiffs, or even chief witnesses for the prosecution in criminal cases. And then there are the judges and legal scholars who in some cases have spent decades arguing against one another, time that might have been profitably spent doing other things, such as eloquently speaking out against hate speech (cf. Delgado and Stefanic 2009: 360-361). **However, it is surely relevant that when victims of hate speech do decide to take a legal course of action they can normally expect to receive not inconsiderable support from legal professionals, who sham the time burden. Counterspeech undertaken by the victims of hate speech is often without this specialist support.**

#### Counterspeech isn’t as useful as speech laws – laws give victims recourse and reparations.

**Tsesis:** Tsesis, Alexander [Professor, Loyola University School of Law] “Burning Crosses on Campus: University Hate Speech Codes.” December 2010. RP

**The notion that counterspeech will adequately combat group hatred and promote civil liberties, and is sufficient to maintain tolerance on campus, which Nadine Strossen and the ACLU have advanced, has been roundly rejected by the international community.** The U.S. Supreme Court has now endorsed the consensus perspective on free speech policy. **Just as with sexual harassment in the workplace, counterspeech is an inadequate remedy for the direct, intimidating attack of hate speech. Racism, chauvinism, ethnocentrism, and xenophobia are too deeply embedded in culture to be changed overnight**. While public attitudes are being changed, hate speech continues to menace out-groups. **Telling a university employee subject to racial or sexual coercion, racial degradation, or ethnic insults to simply respond to antagonists provides victims no legal redress but mere platitudes. Just as responding to comments in a hostile environment does not solve the problem of workplace harassment, neither does counterspeech decrease the risk posed by advocacy groups committed to carrying out a campus campaign of group intimidation, exclusion, and discrimination**. Expecting students at public universities to simply talk things out and convince those who intimidate them of the fallacy of their threatening words and behaviors fails to provide a procedurally cognizable way of seeking legal redress. The mantra of more speech is based on libertarian faith that the world community discounted after it understood the effectiveness of antisemitic Nazi propaganda**. It also elevates harassment and intimidation to an equal plane with dialogue.** To the contrary, the former is a means of disengagement with its reviled object, while the latter is a form of mutual engagement between the interlocutors.

#### Counter speech just causes minorities to be locked up and shot

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “Pressure Valves and Blooded Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulations.” *California Law Review.* Volume 84. July 1994. RP

**In reality, those who hurl racial epithets do so because they feel empowered to do so**.92 Indeed, their principal objective is to reassert and reinscribe that power. One who talks back is perceived as issuing a direct challenge to that power. The action is seen as outrageous, as calling for a forceful response. **Often racist remarks are delivered in several-on-one situ- ations, in which responding in kind is foolhardy.93 Many highly publicized cases of racial homicide began in just this fashion. A group began badger- ing a black person. The black person talked back, and paid with his life.94 Other racist remarks are delivered in a cowardly fashion, by means of graf- fiti scrawled on a campus wall late at night or on a poster placed outside of a black student's dormitory door.95 In these situations, more speech is, of course, impossible. Racist speech is rarely a mistake, rarely something that could be corrected or countered by discussion**. What would be the answer to "Nigger, go back to Africa. You don't belong at the University"? "Sir, you misconceive the situation. Prevailing ethics and constitutional interpretation hold that I, an African American, am an individual of equal dignity and entitled to attend this university in the same manner as others. Now that I have informed you of this, I am sure you will modify your remarks in the future"? 96 **The idea that talking back is safe for the victim or potentially educa- tive for the racist simply does not correspond with reality. It ignores the power dimension to racist remarks, forces minorities to run very real risks, and treats a hateful attempt to force the victim outside the human commu- nity as an invitation for discussion. Even when successful, talking back is a burden. Why should minority undergraduates, already charged with their own education, be responsible constantly for educating others?**

#### Counterspeech fails – people won’t speak out if it could harm them – the community will just abandon people facing hate speech.

**Brown:** Brown, Alexander [Lecturer at the University of East Anglia] “Hate Speech Law: A Philosophical Examination.” *Routledge.* 2015. RP

\*\*\*Bracketed for offensiveness

Of course, the direct targets of hate speech do not exhaust the claw of persons entitled to speak back to hate speech. They have other advocates or potential advocates who may speak back on their behalf. Strossen offers the following anecdotal evidence. '1 have seen many situations in which the per who is attacked initially cannot respond I... but somebody else jumps into the fray and speaks out, and that empowers and encourages the tar-geted individual victim' (e.g., Strossen 2012: 380) However, **Strossen over-looks the fact that similar sorts of problems as those expounded upon above are also likely to confront third parties who are considering speaking back on behalf of the victims of hate speech. For example, it is often assumed that the Internet affords greater opportunities for counterspeech than ever before. It is relatively inexpensive, fast, and open to the whole community. But the fact that the Internet is so public means that it is a place of danger as well as opportunity for potential counterspeakers. Anecdotal evidence suggests that some people, potential "good Samaritans", may be too scared to speak out against hate speakers on Twitter for fear of provoking vitriolic abuse at the hands of these or yet other hate speakers who use this service**. It is also worth noting that if Internet regulators were granted a legal or even an industry mandate to restrict uses of hate speech over the Internet, this would not deny people the right to speak back to offline hate speech online, and may even empower and encourage more of the very speaking back that Strossen to admires. Intriguingly, Strossen argues that if institutional authort-ies deny persons the right to engage in hate speech and this successfully deters them from doing so, then the upshot is that people are denied a chance of speaking back against hate speech (Strossen 2012: 3 86-387). **But I think there is perversity in a logic that says we ought to let something harmful happen just to give people the opportunity to speak out against it. Surely the [survivors] victims of hate speech would say, "Let's just try to stop the hate speech if we can, and not worry so much about the counterspecch if we are successful."**

#### Counter-speech is unlikely to occur in one on one interactions – the community won’t stand behind these people.

**Nielsen:** Nielsen, Laura Beth [Laura Beth Nielsen is a sociologist and lawyer whose research field is the sociology of law, with particular interests in legal consciousness (how ordinary people understand the law) and the relationship between law and inequalities of race, gender, and class. She is a research professor at the American Bar Foundation, as well as a professor of sociology at Northwestern University. She is the author of License to Harass: Law, Hierarchy, and Offensive Public Speech (2004), which studies racist and sexist street speech, targets’ reactions and responses to it, and attitudes about using law to deal with such speech.] “Civility in the Streets: Reactions, Responses, and Resistance to Public Speech.” Insights On Law and Society. Winter 2013. RP

What advice do judges give to targets of unsolicited or offensive speech? More speech. Allow the deliberative process to take place. We are supposed to engage in a “free trade in ideas” (Abrams v. U.S., 1919) and trust that “the best test of truth is the power of the thought to get itself accepted in the competition of the market” (ibid.). The idea of more speech was also famously declared by Justice Brandeis in his concurring opinion in Whitney v. California (1927). Brandeis wrote, “[i]f there be time to expose through discussion the falsehood and fallacies, to avert the evil by process of education, the remedy to be applied is more speech, not enforced silence.” Indeed, both legal experts and ordinary citizens claim that it is not proper for law to intervene in offensive public speech encounters, at least those that revolve around racist and sexist speech. The jurisprudentially preferred solution for the problem of offensive speech (of some varieties) is more speech. This formulation of the problem (that an offensive idea has been inserted into the marketplace of ideas) crowds out other definitions of what precisely may be problematic about being the target of racist or sexist speech in public places. For example, a target might feel threatened, objectified, or dehumanized. In the course of day-to-day life, targets of racist or sexist speech are reminded of their subordinate social status or their status as sex objects. Framing the problem of offensive speech as skewing a “marketplace of ideas” makes the remedy of more speech seem sensible. After all, markets are thought to run well when they are unregulated and the power of a good product/idea will prevail in the end. Thus, rather than looking to the courts to prevent the offensive speech from entering the marketplace, consumers of ideas are expected to reject the bad ones, insert the better ones, and eventually prevail. **Unfortunately, judicial prescriptions for more speech are typically vague. Should a target of offensive speech (or consumer of ideas in a marketplace) respond directly? Immediately? Should she hold a protest or rally at a later time to condemn the idea?** **We do not know precisely what is imagined by the judiciary’s instruction to engage in “more speech,” but in what follows, we see what some individual targets think and do when unexpectedly confronted with offensive speech in public places.** In some contexts, more speech may be just what is called for. **Organized counterspeech is documented and advocated as a remedy in the face of organized hate speech**. Examples include the organized counter demonstrations that occurred when Nazis marched through the largely Jewish community of Skokie, Illinois, and recent organized counter demonstrations at political gatherings, health clinics, and veteran funerals. **In a policed public environment, counterspeech may be effective and safe. But what of the victim of individual, targeted hate speech in public? What kind of speech effectively counters the “truth” of a racial epithet or sexual slur? And how likely are targets to respond? Unfortunately, the reality of public life is that** counter-speech is infrequent at best**.**

#### Calleros is wrong – counterspeech is only sometimes effective and laws should supplant it – not all schools are supportive.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “THE SPEECH WE HATE”: FIRST AMENDMENT TOTALISM, THE ACLU, AND THE PRINCIPLE OF DIALOGIC POLITICS.” *Arizona State Law Journal.* Winter 1995. RP

The two of us were pleased to read Professor Charles Calleros' article, Paternalism, Counterspeech, and Campus Hate-Speech Codes: A Reply to Delgado and Yun, which the Arizona State Law Journal editors were kind enough to advance. Responding to two articles of ours, one in California's and the other in Vanderbilt's law review, both arguing for limitations on hate speech against racial and sexual minorities and women, **Professor Calleros charges that we have given inadequate attention to counterspeech as a possible remedy. Citing examples from Stanford and his own university, Calleros shows how talking back in an effort to raise consciousness empowered the minority victims of hate speech and educated the campus community-all this without resorting to constitutionally troublesome and heavy-handed disciplinary procedures. Nothing that we said in either of the two articles causes us to disagree with Professor Calleros. Talking back sometimes works**. We would just note two reservations. **The first is that the talking back solution puts the onus on young minority undergraduates to redress the harm of hate speech. This is a burden to them, one they must shoulder in addition to getting their own educations. In other words, in addition to educating themselves, they must educate the entire campus community, and do so every time a racial incident takes place. Second, it would be a serious mistake for Professor Calleros' readers to generalize from his sunny and optimistic experience. Not every setting is as progressive, supportive, and loving as A.S.U. and Stanford University. Some campuses do not enjoy a strong norm of civility or respect for people \*1282 of color**. And this is certainly true of hundreds of noneducational institutions, such as the military, fraternities, and certain sport teams. And it is even more true of the many ugly street encounters minorities suffer daily. **In many of these settings, talking back is not an option. In others, it would be foolhardy, because of the imbalance of power. Ivory tower academics must be careful of generalizing from one or two experiences in which speech-their favorite mechanism-seemingly has worked.** The social history of pornography and hate speech in the United States argues for caution, and for a multitude of approaches, not just one. In general, we believe that traditional defenders of free speech must beware of the tendency to light upon a single solution to a complex problem. The purpose of this essay is to explore a type of unitary or essentialist thinking that we find prevalent in First Amendment absolutist circles. **Although we welcome Calleros' article, we think that it has overtones of this simplistic one-size-fits-all approach.** It is in the hope that the future discussion of hate speech will someday exhibit the kind of nuance that we see in other areas of constitutional law, for example equal protection, that we write this essay.

#### Counter-speech isn’t effective – it doesn’t redress the harm that has ALREADY occurred.

**McElwee:** McElwee, Sean [Contributor, The Huffington Post] “The Case for Censoring Hate Speech.” *The Huffington Post.* July 2013. RP

**Reddit, for instance, has become a veritable potpourri of hate speech**; consider Reddit threads like /r/nazi, /r/killawoman, /r/misogny, /r/killingwomen. M**y argument is not that these should be taken down because they are offensive, but rather because they amount to the degradation of a class that has been historically oppressed. Imagine a Reddit thread for /r/lynchingblacks or /r/ assassinating the president. We would not argue that we should sit back and wait for this kind of speech be “outspoken” by positive speech, but that it should be entirely banned**. American free speech jurisprudence relies upon the assumption that speech is merely the extension of a thought, and not an action. **If we consider it an action, then saying that we should combat hate speech with more positive speech is an absurd proposition; the speech has already done the harm, and no amount of support will defray the victim’s impression that they are not truly secure in this society. We don’t simply tell the victim of a robbery, “Hey, it’s okay, there are lots of other people who aren’t going to rob you.” Similarly, it isn’t incredibly useful to tell someone who has just had their race/gender/sexuality defamed, “There are a lot of other nice people out there.”**

#### Counterspeech is paternalizing – it puts the onus on oppressed populations to pull themselves up by the bootstraps

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “Pressure Valves and Blooded Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulations.” *California Law Review.* Volume 84. July 1994. RP

**Defenders of the First Amendment sometimes argue that minorities should talk back to the aggressor**.85 Nat Hentoff, for example, writes that antiracism rules teach black people to depend on whites for protection, while talking back clears the air, emphasizes self-reliance, and strengthens one's self-image as an active agent in charge of one's own destiny.8 6 **The "talking back" solution to campus racism draws force from the First Amendment principle of "more speech,**" according to which additional dia- logue is always a preferred response to speech that some find troubling.87 Proponents of this approach oppose hate speech rules, then, not so much because they limit speech, but because they believe that it is good for minorities to learn to speak out. **A few go on to offer another reason: that a minority who speaks out will be able to educate the speaker who has uttered a racially hurtful remark**."8 Racism, they hold, is the product of ignorance and fear. **If a victim of racist hate speech takes the time to explain matters, he or she may succeed in altering the speaker's perception so that the speaker will no longer utter racist remarks.8 9 How valid is this argument? Like many paternalistic arguments, it is offered blandly, virtually as an article of faith. In the nature of paternalism, those who make the argument are in a position of power, and therefore believe themselves able to make things so merely by asserting them as true.90 They rarely offer empirical proof of their claims, because none is needed. The social world is as they say because it is their world: they created it that way.91**

#### The absence of speech codes is victim blaming – even if counterspeech is good, codes should be an option for minorities

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “The Neoconservative Case Against Hate-Speech Regulation-Lively, D'Souza, Gates, Carter, and the Toughlove Crowd.” *Vanderbilt Law Review.* November 1994. RP

**A fourth argument many neoconservative critics of hate speech regulations make is that prohibitions against verbal abuse are unwise because they encourage minorities to see themselves as victims. Instead of rushing to the authorities every time they hear something that wounds their feelings, persons from minority groups ought to learn to speak back or ignore the offending behavior**. A system of rules and complaints reinforces in their minds that they are weak and in need of protection, that their lot in life is to be victimized rather than to make use of those opportunities that are available to them. Carter, for example, writes that anti-hate speech rules cater to "those whose backgrounds of oppression make them especially sensitive to the threatening nuances that lurk behind racist sentiment." n64 Lively warns that the rules reinforce a system of "supplication and self-abasement"; D'Souza that they distort and prevent interracial friendships and encourage a "crybaby" attitude; n66 Gates that they reinforce a "therapeutic" mentality and an unhealthy preoccupa- tion with feelings. n67 **Would putting into place hate-speech rules induce passivity and a victim mentality among minority populations? This seems unlikely, among other reasons because other alternatives will remain as before. No African American or lesbian student is required to make a complaint when targeted by vicious verbal abuse. He or she can talk back or ignore it if he or she sees fit.** Hate-speech rules simply provide an additional avenue of recourse to those who wish to take ad- vantage of them. Indeed, one could argue that filing a complaint constitutes one way of taking charge of one's destiny: One is active, instead of passively "lumping it" when verbal abuse strikes. **It is worth noting that we do not make the "victimization" charge in connection with other offenses that we suffer, such as having a car stolen or a house burglar- ized, nor do we encourage those victimized in this fashion to "rise above it" or talk back to their victimizer**. If we see recourse differently in the two sets of situations it may be because we secretly believe that a black who is called "nig- ger" by a group of whites is in reality not a victim. If so, it would make sense to encourage him not to dwell on or sulk over the event. But this is different from saying that filing a complaint deepens victimization; moreover, many studies have shown it simply is untrue. n68 Racist speech is the harm. Filing a complaint is not. There is no empirical evidence that filing a civil rights complaint causes otherwise innocuous behavior to acquire the capacity to harm the complainant.

#### Not eliminating hate speech fosters victim blaming – counterspeech IS victim blaming

**Johnson:** Johnson, Catherine B. [J.D. Candidate, Fordham University School of Law, 2001; B.A,, English and Communications, *magna cum laude,* Boston College, 1998.] “STOPPING HATE WITHOUT STIFLING SPEECH: RE-EXAMINING THE MERITS OF HATE SPEECH CODES ON UNIVERSITY CAMPUSES.” *Fordham Urban Law Journal.* 2000. RP

**The tolerance of racist, sexist or homophobic speech at a university destroys "the goals of inclusion, education, development of knowledge, and ethics** that universities exist and stand for.'1 Ad- vocates assert that a university cannot educate its students on the ideals of tolerance, equality and acceptance of difference when its inaction sends a message that such ideals are not significant enough to be vigilantly protected by the administration. **Without the protection of the university system, victims are left with a means of self-regulation, which places an undue burden on "vulnerable members of our society, such as isolated, young black undergraduates attending dominantly white campuses**.' **Hate speech is therefore "harmful to targets" in this setting, because they "perceive the university as taking sides through inaction" and leaving students "to their own resources in coping with the damage wrought." Such a burden takes attention, focus and energy away from their academic pursuits.**

#### Hate speech causes physical and emotional violence to victims—counter-speech can’t solve this immediate harm.

**Smith:** Smith, Craig R. [Craig R. Smith is Professor of Communication Studies and Director of the Center for First Amendment Studies at California State University, Long Beach. See his newest book, *The Four Freedoms of the First Amendment* (Waveland Press, 2004)] “CIRCUMVENTING THE "TRUE THREAT" STANDARD IN CAMPUS HATE SPEECH CODES.” *The Center for First Amendment Studies.* 2013. RP

**Hate speech is a pervasive problem suffered particularly by ethnic and sexual minorities. It can undermine self-esteem, cause isolation, and result in violence. Words can be damaging and the damage can be heightened by emotion and other contextual factors.** Unfortunately, hate crimes are the on rise. According to FBI figures released on November 22, 2004, hate crimes rose from 7,462 in 2002 to 7,489 in 2003. Half of these crimes targeted racial groups; 2,548 against Blacks, 830 against whites, 231 against Asians. Religious intolerance was the cause of 1,343 crimes, and of these, 927 targeted Jews. Attacks based on sexual orientation amounted to 1,239 cases. Words can reinforce and/or maintain social inequality in the home, in the classroom, in the workplace, and in social settings. **Hate messages are real and immediate for victims. In her article in the *Miami Law Review*, Professor Patricia Williams called hate messages "spirit murder." According to research completed by professors Kitano and Allport, the effects of hate speech include displaced aggression, avoidance, retreat, withdrawal, alcoholism, and suicide.** The special report of the Attorney General of California [1988] demonstrates that epithets and harassment "often cause deep emotional scarring and bring feelings of intimidation and fear that pervade every aspect of a victim's life." In his book *Words that Wound*, Professor Delgado demonstrates that hate speech victims suffer high blood pressure and loss of self-worth. In the *Journal of Social Psychiatry*, Professor Hafner demonstrates that psychological disturbances including headaches, social withdrawal, depression, and anxiety attacks result from working or learning in a hostile environment. **Other reports clearly demonstrate that hate speech results in feelings of ethnic or gender inferiority**. In the *Journal of Experimental Sociology* (1985), Greenberg and Pysczynski [Piszynski] demonstrate that overhearing a racist slur causes the listener to evaluate members of the slurred group more harshly in the future. Hostile environments trigger avoidance strategies that limit personal freedom and have serious economic consequences. **Students who are victims of hate speech often avoid classes and other places of hate speech such as food courts and libraries. Their grades then suffer along with their socialization into a healthy diverse community.** According to Lieberson, *Stereotypes: The Consequences for Race and Ethnic Interaction* in Marrett & Leggon, eds (1985) *Research on Race and Ethnic Relations*).

#### It also undermines inclusive democracy and results in lack of participatory access—counter-speech can’t solve that either—they’re *already excluded* from engaging in that speech and disproves your *activism* arguments.

john a. powell 98 [Professor of Law, University of Minnesota, Executive Director of the Institute on Race and Poverty], “As Justice Requires/Permits: The Delimitation of Harmful Speech in a Democratic Society”, *Law & Inequity,* 1 Jan 1998, BE

When speech exacts an injury, the call for more speech rings hollow and is often clearly wrong. It also obscures the fact that much harmful speech is designed to hurt and to undermine the autonomy of the victim. A threatening phone call, a cross burned on the lawn of a Black family or a swastika placed on the home of a Jewish family cannot be explained adequately in terms of the autonomy and expression rights of the speakers. Nor do remedies for property damage capture the harm to the recipient. Where speech takes place in a larger community and causes offense, it might be more plausible to ameliorate the injurious effects with more speech, but only if certain conditions prevail. For example, in R.A.V., the cross-burner presumably in- tended to impress upon the Jones family that the Jones were not welcome in the community. That other community members do not share that sentiment does little to detract from the powerful alienating force of the statement. While the members of the Jones family may in fact have formal access to their community, perhaps through a letter in their community newspaper, they may presume correctly that such a response does little to engage the cross- burners in a dialogue. The cross burners have already conveyed the fact that they do not care to hear what the Jones family has to say. The unfortunate reality is that the "more speech" remedy is ineffectual where one party to an exchange lacks the capacity for empathetic and respectful dialogue and the other lacks the power to mandate engagement. Where parties to an exchange share lit- tle in the way of overlapping narratives, assertions and counter- assertions are likely to remain parallel, passing each other without ever engaging the intended listener. This does not mean that members of a democratic society should not strive to gain an un- derstanding of perspectives outside their own experience. None- theless, the current reality, ignored by the traditional First Amendment narrative, is that the marketplace of ideas is not only skewed, but by its nature incapable of neutrality. The market- place of ideas excludes and thus reproduces disparities in power. Disparities in power lead to disparities in participatory access. It is clear that in many hate speech cases the purpose and the effect is to injure and exclude, not to find the truth or engage in mere self expression. The marketplace of ideas metaphor became popular when so- ciety still believed in an objective truth. As this belief has been undermined, the apparent power of the metaphor is called into question. Some commentators have recognized this and have sug- gested a foundation based on a weaker claim of objective truth. Bollinger has argued for more speech based on a tolerance ration- ale instead of a truth rationale, and Baker has used liberty as his foundation.55 I have suggested that the function and values re- lated to speech are varied and multiple, which suggests that the foundation and justification for speech must also be varied and multiple. But because of the unstable and multiple nature of speech values and truth, I assert that participation in the demo- cratic self-constitutive process is prior to liberty and tolerance in many sites.

#### Racial insults contribute nothing

**Byrne:** Byrne, J. Peter [Associate Professor, Georgetown University Law Center.] “Racial Insults and Free Speech Within the University.” *Georgetown University Law School.* 1991. RP

What constitutional status can racial insults claim in society at large? At first blush, one might be surprised that the first amendment protects insults to individuals or groups at all. **Not even the staunchest supporter of the most absolute view of first amendment protection argues that racial insults have any significant social or individual value. Female and minority writers and witnesses have chronicled in moving terms the hurt and alienation that such insults inflict. Moreover, the denial of a legal remedy against the perpetrators of vilification of minorities lends credence to the view that white- dominated institutions comfortably tolerate racism through complicity or in- sensitivity. The spread of this view saps the strength of societal institutions, already frustrated in pursuit of service to all, by weakening confidence in them by an important constituency. Finally, and not least important, racial insults, which are absurd as well as demoralizing, lower the standard of dis- course about difficult and important issues to that of the least reflective and constructive members of the community.**

#### Racial insults don’t help the search for truth – they make it more difficult to find realities

**Byrne:** Byrne, J. Peter [Associate Professor, Georgetown University Law Center.] “Racial Insults and Free Speech Within the University.” *Georgetown University Law School.* 1991. RP

**The university's first commitment is to truth.** As argued above, the university does not manifest this commitment to truth by licensing all expression. Rather, truth is equated with knowledge, precepts, or hypotheses tentatively established through painstaking, expert, and disinterested in- quiry.95 Students come to the university to learn disciplines of thought, whether in the sciences or the humanities, that are more likely to solve problems or contribute to constructive discourse than the more subjective, flabbier, and less coherent thinking to which they were limited upon matriculation. The commitment to forms of thought and expression conducive to truth and coherence lies at the core of academic values; without this commitment, the university is a scam. **Racial insults have no status among discourse committed to truth. They do not attempt to establish, improve, or criticize any proposition or object of inquiry. They do not even have enough truth value to be false, to represent a discarded alternative idea. Racial insults communicate only scorn or hatred irrationally based on immutable characteristics of the target. Their goal can only be to diminish the victim or to accentuate the belonging of the speaker to a group outside of the despised circle**. They may relieve emotional tension within the speaker, but only at the greater cost of increasing tension within and among the audience. **Thus, the university's commitment to truth provides a basis for proscribing racial insults. The university justifiably could conclude that racial insults neither contribute to the pursuit of truth nor shed light on any issue of value. Rather, racial insults hamper the search for truth by breeding tribal commitments and animosities that constrain rational discussion and by fostering tensions that cloud clear-eyed perception and discredit judicious reflection. For example, racial insults may contribute to an atmosphere that causes scholars or students in the target group either to censor themselves in academic analysis or exposition or to pursue blindly the goals of their group without regard to the long-term interests of the entire academic community.**

### A2 Martyrdom

#### **Psychological evidence shows exposure makes martyrdom worse, while speech codes check this**

Gelber and McNamara: Katharine Gelber is Professor of Politics and an Australian Research Council Future Fellow at the University of Queensland. Her research interests are in freedom of speech and speech regulation and she is currently engaged in a comparative research project, "Free speech after 9/11", Luke McNamara is a Professor in the School of Law and a member of the Legal Intersections Research Centre at the University of Wollongong. He has been researching racial vilification laws and other hate speech laws for two decades. He served as Dean of the Faculty of Law at the University of Wollongong from 2007 to 2012, "The Effects of Civil Hate Speech Laws: Lessons from Australia", Law & Society Review, Amherst 49.3, 2015

-Punishment not criminal – no martyrdom

-Only a few punishments and fewer still public

Yet a sense of proportion is required here. No other case in over two decades of civil litigation has triggered a comparable martyr effect. **Recalcitrant Holocaust denier Frederick Toben attempted to adopt a martyr position when he was found to have breached the same federal racial hatred law years earlier.3**9 His refusal to abide by orders of the Federal Court to remove Holocaust denial material from his Web site resulted in 24 contempt of court findings and, ultimately, a 3 month jail term for contempt of court (Akerman 2009**). However, in public discourse this attempt served to consolidate his infamy and status as a powerful illustration of precisely why hate speech laws were enacted in the first place (Aston 2014; Richardson 2014). Two distinctive features of Australia's hate speech laws are noteworthy here. First, given, that most transgressions of the law are addressed in confidential conciliation, with less than 2 percent resulting in court or tribunal decisions that enter the public domain, opportunities for martyrdom are rare. Second, because the laws rely overwhelmingly on civil remedies, they tend not to produce the criminal sanctions on which the claimed martyr effect is based**. The Bolt controversy does not justify a general conclusion that hate speech laws necessarily produce a counterproductive martyr effect, as it was an atypical event in the history of civil hate speech laws in Australia.¶ Conclusions¶ Our project speaks both to the utility and the inefficacy of the regulatory model adopted by Australia 25-year ago. We have found that Australian hate speech laws provide some remedies. Members of targeted communities are able to lodge complaints with a human rights authority, in a process that reassures them that the law can assist them, and reminds them that the polity has enacted provisions that enable them to seek redress for hate speech. Further, the laws have a direct educative function. Although a very small proportion of cases reach a court or tribunal, those decisions that do enter the public domain have established important precedents that have been subsequently used in advocacy. The laws also have indirect educative value, both in terms of setting a standard for public debate and in the sense that (even unsuccessful) complaints can be used to raise awareness about appropriate ways of expressing oneself in public. Letter writers demonstrated an awareness of the existence of hate speech laws, and media entities have internalised the responsibility to educate their staff about those laws. **There has been a significant reduction in the amount of prejudice expressed in published letters to the editor. We found no evidence of an undesirable chilling effect on public discourse, and considerable evidence that members of the public continue to express themselves on a range of controversial policy issues. We also found little evidence that Australia's regulatory framework produces an unwanted martyr effect, with only one case in the last 25 years having done so.** Finally, targeted communities expressed overwhelming support for the value and retention of the laws, as a symbol of their protection and the government's opposition to discrimination.

#### Martyrdom is worsened when we condone oppressive views.

**Crimethinc:** Crimethinc [News source and compiler] “This is Not a Dialogue.” *Crimethinc.* No date. RP

Trying to suppress their voices will backfire by generating interest in them. **Resistance to fascism doesnʼt increase interest in fascist views. If anything, liberals mobilizing to defend fascists on free speech grounds increases interest in their views by conferring legitimacy on them. This plays directly into their organizing goals, allowing them to drive a wedge between their opponents using free speech as a smokescreen. By tolerating racism, homophobia, anti-Semitism, and xenophobia, so-called free speech advocates are complicit in the acts of terror fascist organizing makes possible.**

#### No uniqueness for this – people like Richard Spencer and Trump are already heroes of the right

#### No impact – they can look as victimized as they want, but they still can’t run around calling people the N word

### A2 Protests

#### Free speech can be invoked at any time to avoid discussion or culpability for racism and shift blame onto minorities instead

**Cobb:** Cobb, Jelani [Writer, The New Yorker] “RACE AND THE FREE-SPEECH DIVERSION.” *The New Yorker.* November 2015. RP

-Excuse of free speech to stymie protests

-Can accuse others of violating their free speech

**Of the many concerns unearthed by the protests at two major universities this week, the velocity at which we now move from racial recrimination to self- righteous backlash is possibly the most revealing**. The unrest that occurred at the University of Missouri and at Yale University, two outwardly dissimilar institutions, shared themes of racial obtuseness, arthritic institutional responses to it, and the feeling, among students of color, that they are tenants rather than stakeholders in their universities. **That these issues have now been subsumed in a debate over political correctness and free speech on campus—important but largely separate subjects—is proof of the self-serving deflection to which we should be accustomed at this point. Two weeks ago, we saw a school security officer in South Carolina violently subdue a teen-age girl for simple noncompliance, and we actually countenanced discussion of the student’s culpability for “being disruptive in class.” The default for avoiding discussion of racism is to invoke a separate principle, one with which few would disagree in the abstract—free speech, respectful participation in class—as the counterpoint to the violation of principles relating to civil rights.** This is victim-blaming with a software update, with less interest in the kind of character assassination we saw deployed against Trayvon Martin and Michael Brown than in creating a seemingly right-minded position that serves the same effect.

#### Campus free speech is used blame student activists and *prevent structural action* against racism

**Cornett:** Cornett, Sarah [Sarah Cornett is a senior at Whitman College, and the editor of the student-run weekly newspaper, The Pioneer] “Racism on Campus - Not Free Speech - Is the Real Story: Mainstream Media Are Missing the Mark.” *Truthout.* December 2015. RP

-Distracts away from other issues – not about free speech but black activism

**Of all the images that accompanied articles on the recent protests against systemic racism at the University of Missouri, a screenshot of a professor shouting at a student photojournalist somehow became one of the most prevalent**. "I need some muscle over here," said Melissa Click, an assistant professor of communications at Missouri, attempting to grab his camera "Help me get this reporter out of here." Anyone following events at the university has likely read this quote many times over. As the clip gained traction on social media, national news organizations began to pay attention. The New York Times ran an article describing the incident on its website's home page. The Atlantic, now infamous for its articles lambasting college students for being "hypersensitive," followed up with a piece by Conor Friedersdorf calling Click's outburst an example of the problem with the idea of "safe space." Part of the media obsession with Click clearly had to do with the nature of the subject itself: threats to journalists tend to draw the attention of journalists. But looking at student accounts from that week show that the story was about much more than a confrontation between protesters and a photographer. **The incident became a media distraction from the real issues - direct threats to students, and the complicity of faculty and school officials in them. As part of the free speech backlash, some journalists took it upon themselves to educate student protesters on how to be proper activists**. "To truly demonstrate self-determination, activists would do well to also learn how to use the media to amplify their story," wrote Deborah Douglas and Afi-Odelia Scruggs in the Columbia Journalism Review. **Journalists effectively turned the spotlight on themselves and used protest movements led by Black students against systemic racism and violence as a platform for their own voices**. The sophisticated organizing and concrete successes of these movements - the University of Missouri system president resigned within days, after all - were ignored. Instead, student activists were told they need a lesson in working with media. "Here was an activist group that needed us to get their message out and they were trying to shut us down," Brian Kratzer, a journalist reporting on the events for the Columbia Missourian, told NPR "Maybe they didn't understand how public spaces work." **The focus on free speech offered an easy critique of student activists.** An important but abstract principle was elevated to become the crux of the story. This strategy is one that New Yorker writer Jelani Cobb called that week "victim-blaming with a software update." **The First Amendment narrative has allowed the media to disregard daily threats students of color are calling attention to at Missouri, Yale and dozens of other campuses. "To understand the real complexities of these students' situation," Cobb wrote, "free- speech purists would have to grapple with what it means to live in a building named for a man who dedicated himself to the principle of white supremacy and to the ownership of your ancestors**." Cobb was referring to Yale, where students have been fighting to change the name of Calhoun College, named after the Confederate general**. In stories on the Yale protests, reporters honed in on a video of a student confronting a residential college master over an email as further evidence of a supposed threat to free speech. But the reasons for students' mobilization - racialized harassment and administrative complicity in it - were repeatedly ignored.** Junior Briana Burroughs called attention to the deeply unsafe campus culture students continue to fight against when she described ways she'd been verbally and physically harassed at fraternity parties. "Fear paralyzed me as their discussions of my Black body and hair turned into taunts and fondling. Every incident included jeering and pointing, and some included spanking and screaming," wrote Burroughs in the Yale Daily News. "Most, however, went unnoticed." As Yale senior Aaron Lewis pointed out on Medium, media discussion of campus activism created a split dynamic: **A free-speech focus obscures the pressing problem of racism on campus. "People have lost sight of the larger issue: systemic racism on campus**," Lewis wrote. **The loss of focus on systemic racism that Lewis mentioned has become especially evident as free speech has been intellectualized as the problem of the "new student activism,"** and liberal college campuses. This came into focus at Yale when Erika Christakis, a live-in administrator at one of the residential colleges, questioned administrative cautioning against culturally appropriative Halloween costumes. "American universities were once a safe space not only for maturation but also for a certain regressive, or even transgressive, experience," she wrote in an email to students "Increasingly, it seems they have become places of censure and prohibition." Christakis pointed to the tired argument that US college students are creating environments of liberal intolerance through the tyranny of "safe spaces" and trigger warnings. In doing so, she negated the real threats cultural appropriation can cause to students of color. Should students really be required to educate their peers on the inappropriateness of wearing a feather headdress or blackface? **Colleges are expected to address overt threats to the mental and physical health of their students.** At the New Republic, Roxane Gay questioned whether those who make statements like Christakis' would believe that racism fell into this category. "Christakis suggests we take our arguments out of their real-world context - eliding real people in the process - and instead move them into the realm of the theoretical, where no one can feel hurt," she wrote. The tendency to intellectualize these situations distracts from the severity of racism and harassment and the threats to students' safety that are all too real. Students like Lewis, the Yale senior, make clear they don't see free speech principles as incompatible with fighting administrative complicity in racial injustice. But in working toward a clearer understanding of the climates these students are resisting, the polarization fostered by many media accounts made this work harder. "There's absolutely no reason we can't acknowledge both the value of free speech and the reality of the prejudice that students of color face everyday," wrote Lewis. "It saddens me that this has gotten to the point where people feel like they have to take sides." Since the week of November 9, media focus has shifted. International attacks by ISIS and the mass shootings in California and Colorado have rightfully commanded headlines in the past two weeks. However, looking back to that week - when media attention was very much focused on college protests against racism and this question of free speech - tells us much about how most news organizations think about student activists. As protests continue on campuses nationwide, Mrinal Kumar, a Yale Daily News columnist, called attention to the real power that students, undeterred by critical media attention, have in creating real change. "The last two weeks have proven that we have the power to incite change not only at Yale but also on campuses across the nation," Kumar said. "But we can't afford to stop there."

#### Their protests are a display of collective powerlessness that panders to the converted but refuses to make specific demands of the power elite.

Doss 15 [(J. Pharoah Doss, black activist blogger and writer—graduate of Geneva College. His writing has appeared in The New Pittsburgh Courier, The Commonline Joural, Gutter Eloquence Magazine, The Shepherd, and Commonline/The E Journal.) “Protest conveys nothing without a demand” [January 28, 2015](http://newpittsburghcourieronline.com/2015/01/28/) http://newpittsburghcourieronline.com/2015/01/28/protest-conveys-nothing-without-a-demand

Frederick Douglass said, “Power concedes nothing without a demand.” **Douglass’ demand was specific, the abolishment of slavery.** The movement to end slavery even named themselves after their demand. They were called abolitionist. **What are the specific demands of modern protesters?** I remember during the Bush administration I asked an anti-war demonstrator, “Why are you protesting the war?” He said, “Because the president lied.” During the occupy Wall Street movement I met a participant. I asked the young lady, “What exactly are you protesting?” She said, “Corporate greed.” After a white police officer was not indicted by a grand jury for killing an unarmed black man in Ferguson, Missouri there was a rally in my home town of Pittsburgh. **The protesters carried signs that read: Black Lives Matter and People of Color Deserve Equality. The one sign that actually stated a demand said: Stop Racist Police Terror. What are these modern protesters asking power to abolish? More importantly does the power being protested have the power to abolish or change the circumstances?** Lying and greed are subjective matters of morality. Congressional staffers and elected officials assembled on the capital steps with their hands up. Their reason was to show solidarity with those protesting death caused by the police. But the only thing hands up can symbolize from elected officials and their staff is that they’re powerless to legislate morality. The signs held by those protesting the grand jury decision made basic statements no civilized person would oppose. **Of course black lives matter, of course people of color deserve equality, and who would not oppose the concept of racist police terror? But stopping racist … fill in the blank is not a demand that can be rectified by those in power. Power has limits**. Racism is a belief in superiority. It can be held by any race. Holding this belief is a problem for the holder alone. It becomes a social problem when the holder puts this belief into practice and discriminates against specific groups. But **the government has already legislated against discrimination. So what is the purpose of modern protest?** According to the editorial board of The Gazette, Western’s Daily Student Newspaper, the purpose of protest … in all of its various forms, has the same goal -- To create awareness of an issue. Really? I don’t think Douglass and the abolitionist sought to create awareness of the institution of slavery. Protest is defined by Dictionary.com as: An expression or declaration of objection, disapproval, or dissent, often in opposition to something a person is powerless to prevent or avoid. **When Trayvon Martin**, a black teen, **was shot and killed** by a Hispanic neighborhood watch volunteer in Florida the police did not arrest the volunteer. **People protested** across the country. **But they weren't raising awarness of neighborhood watch violence or racial profiling. They demanded the arrest of the shooter**. As demonstration grew, the demand grew, and power conceded. The shooter was arrested and tried for second degree murder. **Too often modern protests generalize grievances government can not legislate and corporate policy can not regulate.** They mistake activity for activism. They painfully demonstrate a collective powerlessness that the powerful are fully aware of without a public display. And if Frederick Douglass could address modern protesters he might say, “**Protest conveys nothing to power without a specific demand.”**

#### Violent agitators coopt protests – turns free speech

Nguyen: [(Tina, writer @ Vanity Fair) “TRUMP THREATENS TO DEFUND U.C. BERKELEY AFTER STUDENTS PROTEST BREITBART WRITER” February 2, 2017, <http://www.vanityfair.com/news/2017/02/uc-berkeley-protests-milo-yiannopolous>]

-Undermines free speech – peaceful protesters drowned out

-Berkeley example – violent protesters showed up

Yiannopoulos, who gained notoriety during the Trump campaign as a popular figure within the “alt-right” movement, blamed **“violent left-wing protesters**” for **shut**ting **down the event**, writing on his Facebook page that, “The Left is absolutely terrified of free speech and will do literally anything to shut it down.” **More than 1,500 demonstrators gathered outside the venue to protest Yiannopoulos’s appearance, The Washington Post reported, a protest that grew violent when a large group of agitators showed up, hurling rocks and Molotov cocktails.** It was unclear whether the masked protesters were Berkeley students. Campus officials instituted a “shelter in place” order, and police eventually fired pand pepper balls into to the crowd to disperse it, according to the local police chief. The optics could not have been worse for Berkeley, the birthplace of the Free Speech Movement in the 1960s and a longtime center of nonviolent protest movements. Breitbart writer Tom Ciccotta seized the opportunity to argue that by rioting, the students had “betrayed” their university and proved Yiannopoulos correct in his denunciations of liberal culture. In a statement, the college expressed profound disappointment that “**the threats and unlawful actions of a few have interfered with the exercise of First Amendment rights** on a campus that is proud of its history and legacy as the home of the Free Speech Movement.”

#### Protests fail and this directly answers their internal link of just having “more” people in public colleges engaging in dialogue

Rosman [(Artur, writer) “Why Are Protest Movements (Like the Women’s March) Ineffective?” January 24, 2017, http://www.patheos.com/blogs/cosmostheinlost/2017/01/24/what-makes-all-protest-movements-so-ineffective

**Protest movements frequently use the slogan of “Solidarity.” Solidarity is measured the** quantity of people **attending the marches**, rather than by the quality of their interactions. This choice of words cannot but remind me of the Polish context of the word. I once even translated a piece explaining why Solidarity collapsed so quickly for Thinking in Values (“Solidarity as Church” by Dariusz Karlowicz). **I suspect that the Women’s March will have the same short-term effect as the Occupy Movement, the Arab Spring, Femen, the Greenpeace protests, Global Warming resistances, the Pro-Life Movement, and any number of such movements that have had their moment in the limelight only to fall into irrelevancy in ever-shorter cycles**. Almost by design, **success spells the end of these** single-issue movements**; the same goes for lack thereof**. I include the Polish Solidarity movement in this group, along with many other Eastern European opposition movements, which have totally disappeared without too many Western commentators ever really noticing it. I still get people who come up to me and say “Solidarity” and expect me to jump for joy, or those who say Walesa is a hypocrite as if that’s some sort of news. If **protests are so ineffective, then why is it that protest movements are so popular?** Here’s what Alasdair MacIntyre says in his widely-discussed After Virtue: **It is easy also to understand why protest becomes a distinctive moral feature of the modern age** and why indignation is a predominant modern emotion. ‘To protest’ and its Latin predecessors and French cognates are originally as often or more often positive as negative; to protest was once to bear witness to something and only as consequence of that allegiance to bear witness against something else. He continues in the same book (part of my TOP11 critiques of modernity booklist) to go on and explain why these movements are so ineffective: But **protest is now almost entirely that negative phenomenon which characteristically occurs as a reaction to the alleged invasion of someone’s rights in the name of someone else’s utility**. The self-assertive shrillness of protest arises because **the facts of incommensurability ensure that protestors can never win an argument; the indignant self-righteousness of protest arises because the facts of incommensurability ensure equally that the protestors can never lose an argument either. Hence the utterance of protest is characteristically addressed to those who already share the protestors’ premise. The effects of incommensurability ensure that protestors rarely have anyone else to talk to but themselves.** This is not to say that protest cannot be effective; it is to say that it cannot be rationally effective and that its dominant modes of expression give evidence of a certain perhaps unconscious awareness of this. I should add that they tend to be minimally effective because they are not rationally effective. **Since the protesters tend to talk to themselves about either nebulous notions unrelated to any concrete political agenda, or, about a single cause divorced from a program that rationally embraces dialogue across a series of interconnected issues.**

#### Protests are empirically ineffective and result in appeasement.

**Naim:** Naim, Moises “Why Street Protests Don’t Work.” *The Atlantic.* 2014. RP

**Street protests are in. From Bangkok to Caracas, and Madrid to Moscow, these days not a week goes by without news that a massive crowd has amassed in the streets of another of the world’s big cities.** The reasons for the protests vary (bad and too-costly public transport or education, the plan to raze a park, police abuse, etc.). **Often, the grievance quickly expands to include a repudiation of the government, or its head, or more general denunciations of corruption and economic inequality**. Aerial photos of the anti-government marches routinely show an intimidating sea of people furiously demanding change. **And yet, it is surprising how little these crowds achieve. The fervent political energy on the ground is hugely disproportionate to the practical results of these demonstrations.** Notable exceptions of course exist: In Egypt, Tunisia, and Ukraine, street protests actually contributed to the overthrow of the government. But most massive rallies fail to create significant changes in politics or public policies. Occupy Wall Street is a great example. Born in the summer of 2011 (not in Wall Street but in Kuala Lumpur’s Dataran Merdeka), the Occupy movement spread quickly and was soon roaring in the central squares of nearly 2,600 cities around the world. The hodgepodge groups that participated had no formal affiliation with one another, no clear hierarchy, and no obvious leaders. But social networks helped to virally replicate the movement so that the basic patterns of camping, protesting, fundraising, communicating with the media, and interacting with the authorities were similar from place to place. The same message echoed everywhere: It is unacceptable that global wealth is concentrated in the hands of an elite 1 percent while the remaining 99 percent can barely scrape by. **Such a global, massive, and seemingly well-organized initiative should have had a greater impact. But it didn’t. Though the topic of economic inequality has gained momentum in the years since, in practice it is hard to find meaningful changes in public policy based on Occupy’s proposals. By and large the Occupy movement has now vanished from the headlines. In fact, government responses usually amount to little more than rhetorical appeasement, and certainly no major political reforms. Brazilian President Dilma Rousseff, for example, publicly validated the frustrations of those who took to the streets of her country, and promised that changes would be made, but those ‘changes’ have yet to materialize**

#### Civic engagement and protests are increasing in the status quo

**Higher Education Research Institute:** Higher Education Resarch Institute “College Students’ Commitment to Activism, Political and Civic Engagement Reach All-Time Highs.” *UCLA Newsroom.* February 2016. RP

-Survey of activism across the country

-Students likely to protest

-Higher than ever

**Colleges and universities across the U.S. experienced an increase in student activism over the past year**, as students protested rising college costs and hostile racial climates on their campuses. Now, findings from UCLA’s annual CIRP Freshman Survey (PDF) suggest that participation in demonstrations may intensify in the months ahead. **The survey of 141,189 full-time, first-year students from around the U.S. found that interest in political and civic engagement has reached the highest levels since the study began 50 years ago**. Nearly 1 in 10 incoming first-year students expects to participate in student protests while in college. The survey, part of the Cooperative Institutional Research Program, is administered nationally by the Higher Education Research Institute at the UCLA Graduate School of Education and Information Studies. The 8.5 percent who said they have a “very good chance” of participating in student protests while in college represents the highest mark in the survey’s history and is an increase of 2.9 percentage points over the 2014 survey. **Black students were the most likely to expect to protest, with 16 percent reporting that they had a very good chance of demonstrating for a cause while in college — 5.5 percentage points higher than in 2014. The rising interest in activism coincides with some recent successful protests by college students**. After months of protesting a perceived lack of responsiveness by university administrators to racial bias and discrimination, University of Missouri students forced the resignation of the system’s president in November 2015. “**Student activism seems to be experiencing a revival, and last fall’s incoming freshman class appears more likely than any before it to take advantage of opportunities to participate in this part of the political process**,” said Kevin Eagan, director of CIRP. “We observed substantial gains in students’ interest in political and community engagement across nearly every item on the survey related to these issues.”

#### There’s an oversaturation of protests in the status quo – there’s no uniqueness for any of your impacts – protests are just ineffective

Dvorak 17 [(Petula, reporter @ the Washington Post) “Washington’s new normal: A Trump protest spectacle a day” January 26, 2017, https://www.washingtonpost.com/local/washingtons-new-normal-a-trump-protest-a-day/2017/01/26/7d2e5978-e3bb-11e6-a453-19ec4b3d09ba\_story.html?utm\_term=.7637eb2a5dcd]

**We began Wednesday morning with the sight of Greenpeace activists scaling a 270-foot construction crane in downtown Washington** and unfurling a gigantic orange and black banner that bore the message: “RESIST.” **We ended the day with several hundred protesters marching to the White House to condemn** President **Trump’s** executive order on immigration. Welcome to Trump’s capital. It’s a spectacle a day here. Self-proclaimed anarchists swarmed through downtown D.C. on Trump’s Inauguration Day, torching a limousine, smashing bus-stop glass and vandalizing businesses**. Then hundreds of thousands of people massed on the Mall the following day for the Women’s March on Washington,** waving clever and sometimes scathing signs aimed at the new commander in chief: “There Is So Much Wrong It Cannot Fit on This Sign” and “We Want a Leader, Not a Creepy Tweeter.” [At the Women’s March, the men mattered, too] **Coming Friday: The annual March for Life, which will bring tens of thousands of newly energized antiabortion demonstrators** to the nation’s front yard. **Even the country’s scientists are planning a march on Washington.** Meetings? Deadlines? Schedules? All plans are soft in the District, a city where people chanting in the streets or rappelling off construction cranes bring traffic to a halt. The working world is feeling it. #Thisisnotnormal. I have to confess that I’ve always been a street protest skeptic. This comes from decades of covering protests. I’ve double-time marched backward for miles, interviewing people about apartheid, gay rights, abortion, Rodney King, racism, Palestine, globalization, layoffs, public dancing, the World Bank, female genital mutilation, women’s rights, the death penalty, homelessness and war after war. I’ve slept in the bushes to hang with the protesters, I’ve been in the control rooms as police chiefs strategize riot control. Yet **I’ll never forget talking with the banker in his crisp suit and air-conditioned office, looking out the window at the protesters below and just laughing, laughing, laughing. Because he knew they’d eventually be gone and nothing would change. That reality dulled the power of protest for me**. Even one of the founders of the Occupy Wall Street movement, which spread to 82 countries and had millions of people in the streets, agreed with my assessment. “**The end of protest is the proliferation of ineffective protests that are more like a ritualized performance of children than a mature, revolutionary challenge to the status quo,”** said Micah White, who wrote “The End of Protest — A New Playbook for Revolution” after the Occupy movement had the world’s attention, then sputtered and stalled in a pile of ragged tents and trashed city parks.

#### Institution-protected free speech is a trap states use to entrench their own power.

**Crimethinc:** Crimethinc. [News Source] “This is Not a Dialogue.” *Crimethinc*, January 2017. RP

There appears to be a broad consensus in the US political spectrum in favor of the right to free speech. While opponents may quibble over the limits, such as what constitutes obscenity, pundits from left to right agree that free speech is essential to American democracy. Appeals to this tradition of unrestricted expression confer legitimacy on groups with views outside the mainstream, and both fascists and radicals capitalize on this. Lawyers often defend anarchist activity by referencing the First Amendmentʼs provision preventing legislation restricting the press or peaceable assembly. We can find allies who will support us in free speech cases who would never support us out of a shared vision of taking direct action to create a world free of hierarchy. The rhetoric of **free speech** and First Amendment rights give us a common language with which to broaden our range of support and make our resistance more comprehensible to potential allies, with whom we may build deeper connections over time. But at what cost? This discourse of rights **seems to imply that the state is necessary to protect us against itself, as if it is a sort of Jekyll and Hyde split personality that simultaneously attacks us with laws and police and prosecutors while defending us with laws and attorneys and judges. If we accept this metaphor, it should not be surprising to find that the more we attempt to strengthen the arm that defends us, the stronger the arm that attacks us will become. Once freedom is defined as an assortment of rights granted by the state, it is easy to lose sight of the** actual **freedom those rights are meant to protect and focus instead on the rights themselves—implicitly accepting the legitimacy of the state. Thus, when we build visibility and support by using the rhetoric of rights, we undercut the possibility that we will be able to stand up to the state itself. We also open the door for the state to impose othersʼ “rights” upon us.**

#### The state uses free speech rights to crack down on its critics.

**Crimethinc:** Crimethinc. [News Source] “This is Not a Dialogue.” *Crimethinc*, January 2017. RP

**In the US, many take it for granted that it is easier for the state to silence and isolate radicals in countries in which free speech is not legally protected. If this is true, who wouldnʼt want to strengthen legal protections on free speech? In fact, in nations in which free speech is not legally protected, radicals are not always more isolated—on the contrary, the average person is sometimes more sympathetic to those in conflict with the state, as it is more difficult for the state to legitimize itself as the defender of liberty. Laws do not tie the hands of the state nearly so much as public opposition can; given the choice between legal rights and popular support, we are much better off with the latter.** One dictionary defines civil liberty as “the state of being subject only to laws established for the good of the community.” This sounds ideal to those who believe that laws enforced by hierarchical power can serve the “good of the community”—but who defines “the community” and what is good for it, if not those in power? **In practice, the discourse of civil liberties enables the state to marginalize its foes: if there is a legitimate channel for every kind of expression, then those who refuse to play by the rules are clearly illegitimate.** Thus we may read this definition the other way around: under “civil liberty,” all laws are for the good of the community, and any who challenge them must be against it. **Focusing on the right to free speech, we see only two protagonists, the individual and the state.** Rather than letting ourselves be drawn into the debate about what the state should allow, anarchists should focus on a third protagonist—the general public. We win or lose our struggle according to how much sovereignty the populace at large is willing to take back from the state, how much intrusion it is willing to put up with. If we must speak of rights at all, rather than argue that we have the right to free speech let us simply assert that the state has no right to suppress us. **Better yet, letʼs develop another language entirely.**

#### The far-right claims free speech rights to justify oppressive views.

**Crimethinc:** Crimethinc. [News Source] “This is Not a Dialogue.” *Crimethinc*, January 2017. RP

Anarchists have defended freedom of speech for centuries now. This is important in principle: in an anarchist vision of society, neither the state nor any other entity should be able to determine what we can and cannot say. Itʼs also important in practice: as a revolutionary minority frequently targeted for repression, weʼve consistently had our speeches, newspapers, websites, and marches attacked. But we arenʼt the only ones who have taken up the banner of free speech. **More recently, the right wing in the US has begun to allege that a supposed failure to give conservative views an equal hearing alongside liberal views constitutes a suppression of their free speech. By accusing “liberal” universities and media of suppressing conservative views—a laughable assertion, given the massive structures of power and funding advancing those views—they use First Amendment discourse to promote reactionary agendas. Supposedly progressive campuses reveal their true colors as they mobilize institutional power to defend right-wing territory in the marketplace of ideas, going so far as to censor and intimidate opposition. Extreme right and fascist organizations have jumped onto the free speech bandwagon as well. Fascists rely on the state to protect them, claiming that racist, anti-immigrant, and anti-gay organizing constitutes a form of legally protected speech. Fascist groups that are prevented from publishing their material in most other industrialized democracies by laws restricting hate speech frequently publish it in the United States, where no such laws exist**, and distribute it worldwide from here. In practice, state protection of the right to free expression aids fascist organizing. **If defending free speech has come to mean sponsoring wealthy right-wing politicians and enabling fascist recruiting, itʼs time to scrutinize what is hidden behind this principle.** Despite the radical roots of organizations such as the American Civil Liberties Union that advocate for state protection of free expression, **this form of civil liberties empties the defense of free speech of any radical content, implying that only the** state **can properly guarantee our ability to express ourselves freely** and thus reinforcing the power of the state above the right to free speech itself.

#### Free speech isn’t guaranteed – the state can move to eliminate it when the speech becomes too radical.

**Crimethinc:** Crimethinc [News source and compiler] “This is Not a Dialogue.” *Crimethinc.* No date. RP

**But what if, despite the skewed playing field, someone manages to say something that threatens to destabilize the power structure?** If history is any indication, it swiftly turns out that freedom of expression is not such a sacrosanct right after all. **In practice, we are permitted free speech only insofar as expressing our views changes nothing. The premise that speech alone cannot be harmful implies that speech is precisely that which is ineffectual: therefore, anything effectual is not included among oneʼs rights. During World War I, the Espionage Act criminalized any attempt to “cause insubordination, disloyalty, mutiny, [or] refusal of duty**” or to obstruct recruiting for the armed forces. President Woodrow Wilson urged the billʼs passage because he believed antiwar activity could undermine the US war effort. Alexander Berkman and Emma Goldman were arrested under this law for printing anarchist literature that opposed the war. Likewise, the Anarchist Exclusion Act and the subsequent Immigration Act were used to deport or deny entry to any immigrant “who disbelieves in or who is opposed to all organized government.” Berkman, Goldman, and hundreds of other anarchists were deported under these acts. **There are countless other examples showing that when speech can threaten the foundation of state power, even the most democratic government doesnʼt hesitate to suppress it. Thus, when the state presents itself as the defender of free speech, we can be sure that this is because our rulers believe that allowing criticism will strengthen their position more than suppressing it could. Liberal philosopher and ACLU member Thomas Emerson saw that freedom of speech “can act as a kind of ‘safety valveʼ to let off steam when people might otherwise be bent on revolution.” Therein lies the true purpose of the right to free speech in the US.**

#### Free speech isn’t a dialogue – the state will ignore people and dangle it as a carrot that it can pull away

**Crimethinc:** Crimethinc [News source and compiler] “This is Not a Dialogue.” *Crimethinc.* No date. RP

**Maybe you missed this, but youʼre not in a dialogue. Your views are beside the point. Argue all you want—your adversaries are glad to see you waste your breath. Better yet if you protest: theyʼd rather you carry a sign than do anything. Theyʼll keep you talking as long as they can, just to tire you out —to buy time. They intend to force their agenda on you. Thatʼs what all the guns are for, what the police and drones and surveillance cameras are for, what the FBI and CIA and NSA are for, what all those laws and courts and executive orders are for.** Itʼs what their church is for, what those racist memes are for, what online harassment and bullying are for. Itʼs what gay bashings and church burnings are for. **This is not a dialogue. How could you be so naïve? A dialogue—from which some of the participants can be deported at any time? A dialogue—in which one side keeps shooting and incarcerating the other side? A dialogue—in which a few people own all the networks and radio stations and printing presses, while the rest have to make do with markers and cardboard signs**? A dialogue, really? Youʼre not in a dialogue. Youʼre in a power struggle. All that matters is how much force you can bring to bear on your adversaries to defend yourself from them. You can bet that if you succeed, they will accuse you of breaking off the dialogue, of violating their free speech. They will try to lure you back into conversation, playing for time until they need no more stratagems to keep you passive while they put the pieces in place for tyranny. **This isnʼt a dialogue—itʼs a war.** Theyʼre gambling that you wonʼt realize this until itʼs too late. If freedom is important to you, if you care about all the people marked for death and deportation, start taking action.

#### Free speech isn’t possible in a state marked by disparities – only the rich can ever have a shot at true freedom.

**Crimethinc:** Crimethinc [News source and compiler] “This is Not a Dialogue.” *Crimethinc.* No date. RP

**The discourse of free speech in democracy presumes that no significant imbalances of power exist, and that the primary mechanism of change is rational discussion. In fact, a capitalist elite controls most resources, and power crystallizes upward along multiple axes of oppression**. **Against this configuration, it takes a lot more than speech alone to open the possibility of social change. There can be no truly free speech except among equals—among parties who are not just equal before the law, but who have comparable access to resources and equal say in the world they share. Can an employee really be said to be as free to express herself as her boss, if the latter can take away her livelihood? Are two people equally free to express their views when one owns a news network and the other cannot even afford to photocopy fliers? In the US, where donations to political candidates legally constitute speech, the more money you have, the more “free speech” you can exercise.** As the slogan goes, freedom isnʼt free—and nowhere is that clearer than with speech. Contrary to the propaganda of democracy, ideas alone have no intrinsic force. Our capacity to act on our beliefs, not just to express them, determines how much power we have. In this sense, the “marketplace of ideas” metaphor is strikingly apt: you need capital to participate, and the more you have, the greater your ability to enact the ideas you buy into. **Just as the success of a few entrepreneurs and superstars is held up as proof that the free market rewards hard work and ingenuity, the myth of the marketplace of ideas suggests that the capitalist system persists because everyone—billionaire and bellboy alike—agrees it is the best idea.**

### A2 PC Culture

#### The Aff’s focus on issues of PC culture and fighting hypersensitivity is complicit in capitalism and detracts resources from addressing larger problems

**Khan:** Khan, Tariq [Contributor and Researcher, The Hampton Institute] “Masking Oppression as Free Speech: An Anarchist Take.” November 2015. RP

**In the present-day United States, a shallow idea of "free speech" is often wielded by the privileged as a way to direct attention away from critiques of existing conditions and systems; particularly critiques of capitalism**, imperialism, white supremacy, and patriarchy. For example, two years ago when UC Berkeley students organized to keep comedian Bill Maher from speaking on their campus, leading media outlets framed it as a controversy about free speech rather than engaging with the much deeper critiques the students had about Maher's perpetuation of US imperialist, Orientalist discourse which fuels militarism abroad and racist violence at home. [1] Yet, while students who protest imperialist discourse are characterized as a threat to free speech, the actual threat to free speech in academia goes unchallenged by leading media outlets. [2]October 8, 2015, at the Community College of Philadelphia, English professor Divya Nair spoke at a rally organized by students in protest of police recruiters on campus. The students and Professor Nair drew connections between colonialism and modern US policing; particularly the police tactic of recruiting poor people of color to act as the capitalist state's foot-soldiers to control poor Black and Brown communities. Later that day, school authorities suspended Professor Nair without pay, and they have since suspended three student group members who are facing disciplinary hearings. In the past few years there has been a noticeable campus crackdown on anti-colonialist expression. Last year the American Indian Studies Program at the University of Illinois, Urbana-Champaign hired Professor Steven Salaita, known for his comparative studies of US settler colonialism in the Americas and Israeli settler colonialism in Palestine. Under pressure from wealthy donors, Israel lobby groups, and establishment politicians, the Chancellor and the Board of Trustees stepped in - against the wishes of the American Indian Studies Program - and "unhired" Salaita, citing the supposedly "uncivil" tweets he posted criticizing Israel's indiscriminate killing of civilians - including over 500 children - in Gaza last year. Several law-makers, Israel lobbyists, and campus authorities have likewise been working to silence the growing BDS (Boycott, Divestment, and Sanctions) movement against Israeli apartheid. Anti-colonialist students have also faced silencing and punishment. For example, earlier this semester at Cal State Sacramento, sophomore Chiitaanibah Johnson (Navajo/Maidu) was belittled and told by her professor that she was expelled from his US history course after she quite correctly challenged his assertion that the United States did not carry out genocidal anti-Indian policies. All of these cases and many other similar ones resonate with my own experience. Ten years ago, when I was an undergraduate at George Mason University, I was violently attacked by vigilantes and police for protesting military recruiters on campus. Right-wing students called me a "pussy" and a "faggot," and ripped the anti-militarist sign off of my chest. Vigilantes held me down to "assist" the officers in brutalizing and handcuffing me. When the police saw my foreign name, they decided I was a terrorist. One officer blamed me for 9-11. Another officer yelled at me, "You people are the most violent people in the world." An officer threatened to hang me upside-down from the ceiling in my jail cell for "running my mouth." Even though I was a student at the university, the police charged me with trespassing and disorderly conduct. At first, University officials defended the police's actions by saying I "was considered to be distributing literature." **In spite of the fact that the most egregious violations of free speech and academic freedom are committed in service to right-wing and establishment interests higher on the social hierarchy than students and professors, there is a highly problematic narrative proliferating in the United States; that today's college students are "oversensitive" or "too politically correct" and that this supposed oversensitivity is leading to a crackdown on free speech and academic freedom.** Both conservatives and liberals have perpetuated this false narrative. Conservative columnist George Will complained that the right of thin-skinned liberals "to never be annoyed" has become "a new campus entitlement." In a popular Vox article titled " I'm a Liberal Professor, and my Liberal Students Terrify Me," a college professor using the pseudonym Edward Schlosser complained about a climate of fear in academia caused by an overemphasis on the "safety and comfort" of students from historically marginalized groups. The September issue of The Atlantic featured the article " The Coddling of the American Mind," which argued that "A movement is arising, undirected and driven largely by students, to scrub campuses clean of words, ideas, and subjects that might cause discomfort or give offense." The piece lamented what a shame it is that students on some campuses led campaigns to disinvite former U.S. Secretary of State Condoleezza Rice and International Monetary Fund managing director Christine Lagarde from campus speaking engagements. **Its authors, Greg Lukianoff and Jonathan Haidt argued that instead of protesting such speakers, women and Black students should look up to Rice and Lagarde as role models. The irony of two white men condescendingly determining who women and people of color should look to as role models did not occur to the authors**. Shortly following the publication of the Atlantic article, President Obama echoed its sentiments at an education town hall in Des Moines. He said: "I've heard of some college campuses where they don't want to have a guest speaker who is too conservative, or they don't want to read a book if it had language that is offensive to African Americans or somehow sends a demeaning signal towards women. I've got to tell you, I don't agree...that when you become students at colleges, you have to be coddled and protected from different points of view." With this, Obama further reinforced the harmful notion that racist and misogynist speech is simply a "point of view" equal with all other "points of view," as well as the notion that "oversensitive" students are stifling free expression. **More recently, I was surprised to find in my alma mater's newspaper that Atlantic authors Lukianoff and Haidt were using the experience that I went through ten years ago to further the narrative that colleges are choosing "political correctness over freedom of expression."** "Oversensitivity" and "political correctness" had absolutely nothing to do with what happened to me. I immediately wrote a letter to the Fourth Estate, George Mason University's newspaper saying, in part: "Was Salaita targeted because he was not "politically correct?" Was he targeted for being "offensive?" Was the campaign against him triggered by students who are uncomfortable with controversy? The answer to all three questions is no. Plenty of professors at UIUC have used swear words on social media with no repercussions, it was not liberals with supposed hypersensitivity about political correctness who raised their eyebrows about Salaita, and it was the student activist Left - the people who are supposedly policing uncomfortable language, according to Lukianoff and Haidt - who most boldly came to Salaita's defense. The campaign against Salaita came not from below, but from above, from rich and powerful establishment interests. Was the repression against me at GMU ten years ago caused by a culture of hypersensitive "political correctness?" Again, no... The first people to come to my defense, and to the defense of free speech, were leftist students and professors, LGBT students, South Asian and Arab students, the very people who the right would have us believe are too "politically correct" to tolerate free speech. It was the local right wing, the people who complain that society is "offended" too easily - fascist groups such as Free Republic, which later merged with other similar groups to become the Tea Party movement - who reveled in my arrest and called for more repression of students like me." Likewise, Professor Divya Nair, the students at the Community College of Philadelphia, students such as Chiitaanibah Johnson at Cal State, and the student-led BDS movement are not being targeted for offending supposedly "PC" sensibilities. They are being targeted specifically for their anti-colonialist/anti- imperialist positions. In all of the hand-wringing in mainstream and conservative discourse about colleges violating principles of free expression, one looks in vain for any discussion of these kinds of examples. Indeed, the hand-wringers are more concerned that rich imperialist war-mongers such as Condoleeza Rice are being protested off of campuses than they are that actual students and professors are being threatened, suspended, expelled, fired, or are facing disciplinary hearings for criticizing the policies and worldview of people like Rice. Blaming something like Condoleeza Rice being disinvited from a speaking engagement on student "oversensitivity" and inability to hear uncomfortable speech misdirects public attention from the real anti- imperialist critique that student protestors have for why they don't want a war-monger propagandizing on their campus. To refer to such students as "afraid of controversy" is more than a stretch. Chiitaanibah Johnson, for example, charged the United States with genocide. The anti-police students in Philadelphia carried a banner calling for a "Pig Free CCP." Steven Salaita, who has been championed by the student Left was targeted by the establishment for statements such as "At this point, if Netanyahu appeared on TV with a necklace made from the teeth of Palestinian children, would anybody be surprised?" These are hardly what one can call the "PC" positions of coddled students. **The flawed notion that overly-sensitive "PC" students are shutting down free speech is harmful. Student initiatives on campuses to challenge things such as racial or gender micro-aggressions are not challenges to free speech and they are not based on the idea that micro-aggressions are "offensive." Micro-aggressions must be challenged because they are oppressive, not because they are offensive. Racist speech leads to an environment that is conducive to racist violence. It marginalizes students of color and makes the university not "uncomfortable," but unsafe**. Anti-LGBT speech makes campus unsafe, not merely "uncomfortable" for LGBT students. Misogynist speech creates an environment that is conducive to sexual assault. Any decent social scientist knows this**. It is not about people being "uncomfortable" or "offended." It is about people being unsafe and oppressed.** White frat boys would have us believe that they are being unfairly "silenced" because women and people of color don't laugh at their misogynistic or racist jokes, meanwhile anti-colonialist and anti-imperialist students and professors face actual repression from law-makers, wealthy donors, campus administrators, police, and vigilantes. The same foolish people who boycott stores for saying "Happy Holidays" instead of "Merry Lord Jesus God Almighty and the Bible Christmas!" complain that Black students fighting against actually-existing racial violence are "oversensitive." **The threat to campus free speech and academic freedom is not anti-racist or feminist students. The threat to free expression in academia is real, and it is coming down the social hierarchy from rich and powerful establishment interests, not upward from "coddled" students. The beautiful ideal of free expression is cheapened when oppression is allowed to go unchecked under the guise of a disingenuous notion of "free speech."**

#### The term political correctness becomes an ideal we can use to demonize ideas we want to ignore

**Serano:** Serano, Julia [Author] “Prejudice, Political Correctness, and the Normalization of Donald Trump.” 2016. RP

**To put it another way, “political correctness” is not an ideology, nor is it a specific set of behaviors. It is simply a slur that people utter when they want to dismiss an expression of social justice activism that they do not like. One person’s “political correctness” is another person’s common decency or righteous activism**. It is also crucial to note that, while many people resent activist attempts to change social norms, we are not the only ones engaged in such actions: Those who harbor prejudices are also constantly trying to assert and/or change social norms, albeit in the opposite direction. And yet, these latter attempts do not face similar scrutiny or smearing. **If I promote gender-neutral restrooms or pronouns, I will be dismissed as being “politically correct,” whereas North Carolina Governor Pat McCrory (who championed HB2, the law that criminalizes trans people who use public restrooms) is never described as “politically correct”** (even though he has clearly engaged in political attempts to enforce a social norm of his own creation). When college students in 2015 tried to protest and no-platform Germaine Greer (an extreme and outspoken transphobe) people called it political-correctness-run-amok, but conservative protesters who attempt to protest and no-platform transgender activists (as happened to me in 2004) are never dismissed as “politically correct.” **This asymmetry, along with its vagueness and inconsistent usage, is why I detest the term “political correctness,” and why I think we should all stop using it. From my vantage point, there are bigots who are pushing for social norms that conform to their beliefs, and social justice activists who are pushing for social norms that conform to our beliefs**. And the population at large will have varied opinions about whether any given social norm is worthy or unworthy, advantageous or disadvantageous

#### Political correctness can be used to combat bigotry

**Croft:** Croft, Adam [News Editor, The Branding Iron] “Why Being ‘PC’ Matters.” *The Branding Iron.* RP

**These days the notion of “political correctness” carries a pretty negative connotation**. Sixty-one percent of Americans believe America is becoming too politically correct, according to a poll from Rasmussen Reports, making political correctness less popular than the president, whose approval rating is just over 50 percent. On Facebook I routinely see posts claiming America is becoming too politically correct and comments railing against the fact that cultural mainstays of yesteryear have been abandoned for being offensive. **People mourn the loss of the ‘Dukes of Hazzard’ while proudly referring to Caitlin Jenner as a man, all under the guise of “fighting politically correct nonsense.” A grown man on my Facebook feed defended his use of the slur “retard,” because he’s “always used that word**.” Just this week one of our best writers was scorned for pointing out the overt racism in Pinedale’s Rendezvous celebration. People act as though being “PC” is an unnecessary annoyance that threatens their very way of life. They act as though it’s a disease spreading from liberal coastal states into their neat, conservative homes in landlocked vacuums. **However, everyone so vehemently opposed to political correctness makes the same mistake when critiquing political correctness: they make it about themselves**. You see, we as a society do not choose to remove certain words from our vernacular at random. A secret committee of liberal politicians doesn’t meet once a year and decide red-face pageants are racist just to stick it to the good people of Pinedale. In fact, we as a society remove language, symbols or practices from our societal discourse when groups identify those elements as offensive, or when they decide they don’t want to be identified by certain terminology anymore. Moreover, you do not have any say in whether or not those terms are offensive if you do not belong to the group those terms affect. At that point, you’re in a position of privilege. **For example, the man on my Facebook feed that used the R-word had no right to defend that word’s use as he is not a member of the group that word affects. He comes from a background of privilege, as someone who has never dealt with the negative connotations of that term. He doesn’t know what it’s like to be bullied by the use of that word.** Instead, he should have recognized he has no frame of reference when it comes to that term, and left it to disabled persons to determine whether or not it is appropriate. **So, when you “take a stand” against political correctness by sharing a picture of a confederate flag, using the R-word or referring to transgender individuals by the wrong pronoun, you’re not fighting for your right to say whatever you want. That right will always be there. You’re just proving that you are inconsiderate of the wishes of subjugated groups to self-identify.**

#### No PC culture or chilling effect – Wisconsin code proves.

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

**As the controversy over speech rules has continued in the press and other media, they have been cited as evidence of a trend toward thought control, "politically correct" thinking, and other repressive evils.41 There is, however, little in these cases to suggest that the Wisconsin regulation has had the effect of cutting off debate within the university community, or that a narrow restric- tion on discriminatory, harassing speech creates a threat to free expression. Rather, the practical experiences with the Wisconsin rule indicate that the risk of a "chilling effect" on speech from a narrowly applicable rule is minimal or nonexistent.**

#### Anger about PC culture stems from a white-centric view.

**Harper:** Harper, Shaun R. [Contributor, The Washington Post] “No, protesters who point out campus racism aren’t silencing anybody.” *The Washington Post.* March 2016. RP

**Critics of the Black Lives Matter movement and its associated racial justice protests on college campuses believe free speech is under attack. Activists have been dubbed whiny, hypersensitive “crybullies” who silence others by calling out racism. Black collegians are exercising their rights to speak out against racism and to demand more inclusive, less dehumanizing learning environments. The outrage about a new era of “political correctness” fails to understand how black students, faculty, and staff at predominantly white institutions have felt for centuries that their freedom to speak out against campus racism has been effectively suppressed**. I have spent my academic career conducting research on black undergraduate students’ experiences, including a recently published study on racist stereotypes black men face at institutions where they are persistently underrepresented. In addition, college presidents and other administrators annually hire researchers from the center I direct at the University of Pennsylvania to assess their campuses’ racial climates. We write reports to institutions that include our findings and recommendations. At too many schools I have studied, professors have accused black students of plagiarism because their papers were so well written. **Racial epithets have been painted on black students’ residence hall doors, and nooses have been hung around campuses**. Their peers in predominantly white fraternities have denied black students membership on the basis of race, chanted the N-word, and hosted blackface and racist theme parties parodying their cultures.

#### The invocation of something as “free speech” is an excuse to shut out opposing ideas – free speech becomes an inviolable right, and anybody who opposes it is the enemy.

**Goldberg:** Goldberg, Michelle [Contributor, Slate] “Is ‘Free Speech’ Becoming the New ‘All Lives Matter’?” *Slate.* November 2015. RP

**Today, the rhetoric of free speech is being abused in order to shut down dissent and facilitate bigotry**,” Laurie Penny writes in a New Statesman piece titled “The Free Speech Delusion.” At the New Yorker, in “Race and the Free-Speech Diversion,” Jelani Cobb writes, “**The freedom to offend the powerful is not equivalent to the freedom to bully the relatively disempowered**.” The Guardian’s Lindy West: “**Teaching marginalised people that their concerns will always be imperiously dismissed, always subordinated to some decontextualised free-speech absolutism is a silencing tactic.**” Kate Manne and Jason Stanley in the Chronicle of Higher Education: “**All too often,** when people depict others as threats to freedom of speech, what they really mean is, ‘Quiet!**’** ”

### A2 Deliberation/MOI

#### Free speech is an illusion – minority voices will never be heard and are silenced, while exceptions to the First Amendment give the white majority a bully pulpit to exert dominance.

**Delgado and Stefancic:** Richard Delgado and Jean Stefancic [Delgado is Charles Inglis Thomson Professor of Law, University of Colorado. J.D., U. Cali- fornia-Berkeley, 1974. Stefancic is theTechnical Services Librarian, University of San Francisco School of Law. M.L.S., Simmons College, 1963; M.A., University of San Francisco, 1989.] “Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills.” *Cornell Law Review.* Volume 77. September 1992. RP

-Whites have equivalent of speech codes always – property interests

-Law not neutral – protects whites no matter what

-People will ignore black voices

**Speech and free expression are not only poorly adapted to rem- edy racism, they often make matters worse-far from being stalwart friends, they can impede the cause of racial reform**. First, they en- courage writers, filmmakers, and other creative people to feel amoral, nonresponsible in what they do. 18 8 Because there is a mar- ketplace of ideas, the rationalization goes, another film-maker is free to make an antiracist movie that will cancel out any minor stereotyp- ing in the one I am making. My movie may have other redeeming qualities; besides, it is good entertainment and everyone in the in- dustry uses stock characters like the black maid or the bumbling Asian tourist. How can one create film without stock characters? 18 9 Second, when insurgent groups attempt to use speech as an in- strument of reform, courts almost invariably construe First Amend- ment doctrine against them.1 90 As Charles Lawrence pointed out, **civil rights activists in the sixties made the greatest strides when they acted in defiance of the First Amendment as then understood.**191 They marched, were arrested and convicted; sat in, were arrested and convicted; distributed leaflets, were arrested and convicted. Many years later, after much gallant lawyering and the expenditure of untold hours of effort, the conviction might be reversed on ap- peal if the original action had been sufficiently prayerful, mannerly, and not too interlaced with an action component. This history of the civil rights movement does not bear out the usual assumption that the First Amendment is of great value for racial reformers. 19 2 Current First Amendment law is similarly skewed. **Examination of the many "exceptions" to First Amendment protection discloses that the large majority favor the interests of the powerful**. 19 3 **If one says something disparaging of a wealthy and well-regarded individ- ual, one discovers that one's words were not free after all; the wealthy individual has a type of property interest in his or her com- munity image, damage to which is compensable even though words were the sole instrument of the harm.** Similarly, if one infringes the copyright or trademark of a well-known writer or industrialist, again it turns out that one's action is punishable. 19 5 Further, if one disseminates an official secret valuable to a powerful branch of the military or defense contractor, that speech is punishable. 19 If one speaks disrespectfully to ajudge, police officer, teacher, military offi- cial, or other powerful authority figure, again one discovers that one's words were not free;1 9 7 and so with words used to defraud, 198 form a conspiracy, 199 breach the peace,200 or untruthful words given under oath during a civil or criminal proceeding.20 1 Yet the suggestion that we create new exception to protect lowly and vulnerable members of our society, such as isolated, young black undergraduates attending dominantly white campuses, is often met with consternation: the First Amendment must be a seamless web; minorities, ifthey knew their own self-interest, should appreciate this even more than others. 20 2 **This one-sidedness of free-speech doctrine makes the First Amendment much more valua- ble to the majority than to the minority. The system of free expression also has a powerful after-the-fact apologetic function.** Elite groups use the supposed existence of a marketplace of ideas to justify their own superior position.203 Imag- ine a society in which all As were rich and happy, all Bs were moder- ately comfortable, and all Cs were poor, stigmatized, and reviled. Imagine also that this society scrupulously believes in a free market- place of ideas. Might not the As benefit greatly from such a system? On looking about them and observing the inequality in the distribu- tion of wealth, longevity, happiness, and safety between themselves and the others, they might feel guilt. Perhaps their own superior position is undeserved, or at least requires explanation. But the existence of an ostensibly free marketplace of ideas renders that ef- fort unnecessary. Rationalization is easy: our ideas, our culture competed with their more easygoing ones and won.20 4 It was a fair fight. Our position must be deserved; the distribution of social goods must be roughly what fairness, merit, and equity call for.20 5 It is up to them to change, not us. A free market ofracial depiction resists change for two final rea- sons. First, the dominant pictures, images, narratives, plots, roles, and stories ascribed to, and constituting the public perception of minorities, are always dominantly negative. 20 6 Through an unfortu- nate psychological mechanism, incessant bombardment by images of the sort described in Part I (as well as today's versions) inscribe those negative images on the souls and minds of minority per- sons. 20 7 Minorities internalize the stories they read, see, and hear every day. Persons of color can easily become demoralized, blame themselves,andnotspeakupvigorously.208 **The expense of speech also precludes the stigmatized from participating effectively in the marketplace of ideas**. 20 9 They are often poor-indeed, one theory of racism holds that maintenance of economic inequality is its prime function2 0 -and hence unlikely to command the means to bring countervailing messages to the eyes and ears of others. Second, even when minorities do speak they have little credibil- ity. **Who would listen to, who would credit, a speaker or writer one associates with watermelon-eating, buffoonery, menial work, intel- lectual inadequacy, laziness, lasciviousness, and demanding re- sources beyond his or her deserved share?** Our very imagery of the outsider shows that, contrary to the usual view, society does not really want them to speak out effectively in their own behalf and, in fact, cannot visualize them doing so. Ask yourself: How do outsiders speak in the dominant narratives? Poorly, inarticulately, with broken syntax, short sentences, grunts, and unsophisticated ideas.21' Try to recall a single popular narrative of an eloquent, self-assured black (for example) orator or speaker. In the real world, of course, they exist in profusion. But when we stumble upon them, we are surprised: "What a welcome 'exception'!" Words, then, can wound. But the fine thing about the current situation is that one gets to enjoy a superior position and feel virtu- ous at the same time. By supporting the system of free expression no matter what the cost, one is upholding principle. One can be- long to impeccably liberal organizations and believe one is doing the right thing, even while taking actions that are demonstrably inju- rious to the least privileged, most defenseless segments of our soci- ety.212 In time, one's actions will seem wrong and will be condemned as such, but paradigms change slowly.2 1 3 **The world one helps to create-a world in which denigrating depiction is good or at least acceptable, in which minorities are buffoons, clowns, maids, or Willie Hortons, and only rarely fully individuated human beings with sensitivities, talents, personalities, and frailties-will survive into the future**. One gets to create culture at outsiders' ex- pense. And, one gets to sleep well at night, too. Racism is not a mistake, not a matter of episodic, irrational be- havior carried out by vicious-willed individuals, not a throwback to a long-gone era. It is ritual assertion of supremacy, 214 like animals sneering and posturing to maintain their places in the hierarchy of the colony. It is performed largely unconsciously, just as the ani- mals' behavior is. 2 15 Racism seems right, customary, and inoffensive to those engaged in it, while bringing psychic and pecuniary advan- tages.21 **6 The notion that more speech, more talking, more preach- ing, and more lecturing can counter this system of oppression is appealing, lofty, romantic-and wrong.**

#### Unrestricted speech privatizes the public space – it lets people use hateful speech to drown out the voices of others – we shouldn’t allow expressions that contribute nothing

**Donnelly:** Donnelly, Michael [Michael D. Donnelly is Associate Professor of English and Director of the Writing Program at Ball State University. His work has been published in PRE/TEXT, inventio, Reflections: Writing, Service Learning, and Community Literacy, and the edited collections Agency in the Margins: Stories of Outsider Rhetoric (2010) and Unsustainable: Reimagining Community Literacy, Public Writing, Service Learning, and the University (2013). He is co-editor of the collection Critical Conversations about Plagiarism (2012). He currently teaches graduate courses in contemporary rhetoric and composition theory, and undergraduate courses in public discourse, digital literacies, and first-year writing.] “Freedom of Speech and the Function of Public Discourse.” *Present Tense,* Volume 4, Issue 1. 2014. RP

-Public space is an area for discussion

-Can’t have discussion if hate speech

-Westboro Baptist Church one example

**Habermas’s account of the emergence of a bourgeois (liberal) public sphere in the late-18th and early 19th centuries has been widely critiqued, yet remains central as a description of a particular, conceptual ideal, one which emphasizes rational-critical debate among diverse peoples who, although they occupy unequal positions in society, are able to function as relative equals (Habermas; Fraser; Roberts-Miller). The public good depends on participants who have the intellectual and moral aptitude to set aside both imbalances of power and individual interests while exercising rational judgment.** Whether or not this particular model ever actually existed, it continues to dominate public legal and political discussion (Roberts-Miller 18; Weintraub and Kumar 7). There are, however, some alternatives. Patricia Roberts-Miller lists an additional five models, of which I should like to focus on three: the interest-based, deliberative, and agonistic. These provide a useful means of talking about characteristics of public discourse and its relationship to different versions of democracy. The interest-based model “assumes that individuals can and should pursue their own self-interest” in a “marketplace of ideas” (Roberts-Miller 98), and that the public good is served inasmuch as better ideas are assumed to flourish. **The deliberative model places a high value on listening, seriously and carefully, to a wide range of perspectives in order to think through, and possibly even change**, one’s own (Roberts-Miller 183). It therefore tends to assume that there is a common good that supersedes the interests of the autonomous individual.14 **An agonistic model of the public sphere heightens the deliberative model’s emphasis on listening and revising one’s own position, though it also tends to resist the impulse toward consensus that is characteristic of the deliberative and other models** (Roberts-Miller 126, 132). Both models reflect Mill’s belief in the fallibility of opinions and the necessity of a “collision of different opinions” (Roberts 71), but have been largely overshadowed and undermined—despite regular justificatory references to them—by the bourgeois (liberal) and interest-based models. The bourgeois and interest-based models, in fact, complement one another: by defining the public good in terms of individual liberty, they craft a justificatory link between free expression and liberal capitalism. Taken together, they ultimately normalize the expressive function of public discourse. The privileging of such expression is not merely not deliberative, it is anti-deliberative, and stifles public debate rather than encouraging it. Mill’s notion of the fallibility of opinions works, then, to justify the expression of any opinion; but the idea of a collision of opinions, in which one’s own opinions are called into question, is lost. **In other words, the Westboro Baptist Church decision illustrates the reliance on a model of the public sphere that privileges autonomous, individual expression at the expense of any actual deliberation. Viewed from a deliberative or agonistic perspective, such speech should not be protected merely because it involves “matters of public import”** (Snyder, S. Ct. 15), **but should force us to ask instead, What does the Church’s opinion contribute to discussion about matters of public concern? What sort of public debate is engaged or enriched as a result of the expression(s) in question? A**nd in what ways does this advance the creation of a (more) democratic society? **In fact, the issue of hate speech itself is actually erased from the discussion early on—public outrage as well as the Supreme Court’s decision emerge from the Church’s protests at military funerals, and the harm in question is that suffered by Albert Snyder; the question of hate speech targeting the gay community isn’t even part of the discussion**. This is not (as hate speech apologists have framed it) simply “speech that you don’t want to hear” (Warburton 1). **This is the expression of opinions with intent to harm, but also with the intent to deny the need or usefulness of democratic deliberation. Westboro Baptist Church has made clear that they have no real interest in any form of discussion, debate, or deliberation; moreover, they appear fundamentally opposed to the very democracy they’ve appealed to for protection.** After all, they also insist the Supreme Court has failed its role as “the conscience of the nation” by ruling “that we must respect sodomy” (Westboro). **Thus, I think, the terms of the free speech debate must change. The liberal defense of hate speech relies on a broader cultural context in which the function of rhetoric is always already understood to be primarily expressive and self-interested. We need to re-think the entire concept of “free speech” in terms of a truly democratic public sphere, one in which the “public good” is reconceived—not to erase or exclude the autonomous individual, but to situate her in relation to and as a member of the body politic, which is to say, as a participant in and contributor to the governance of a community, and not merely the expresser of an “opinion.”**

#### The marketplace of ideas is inconsistent – defamation and other speech is punishable but not hate speech – more speech is empirically not better.

**SeLegue:** SeLegue, Sean M. [B.A. 1988, University of California, Los Angeles; J.D. candidate 1991, Boalt Hall School of Law, University of California, Berkeley.] “Campus Anti-Slur Regulations: Speakers, Victims, and the First Amendment.” *California Law Review.* May 1991. RP

**The "marketplace of ideas" is the cornerstone of first amendment doctrine as enunciated by the Supreme Court**. The marketplace model focuses on the role of speech in truth-seeking: Speech is the means by which people convey information and ideas, by which they communicate viewpoints and propositions and hypotheses, which can then be tested against the speech of others. Through the process of open discussion we find out what we ourselves think and are then able to compare that with what others think on the same issues. The end result of this process, we hope, is that we will arrive at as close an approximation of the truth as we can. **According to the marketplace theory, victims of offensive speech must find their remedy, if any, through "the market" by offering more speech. One problem with the marketplace theory is that some speech harms are not amenable to correction through the marketplace of ideas: "it has never been deemed an abridgement of freedom of speech or press to make a course of con- duct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed." For example, punishment for fraud or conspiracy to commit a violent crime is not generally recognized as an abridgement of speech (even though the speaker used words to commit those offenses), because the marketplace provides an inadequate remedy to the victims of these crimes. n48 The legal system is therefore free to provide a remedy through criminal punishment or damages**. The marketplace remedy is inadequate for victims of group-based epithets because the assaultive aspects of epithets cannot be redressed by more speech. n49 Following the line of reasoning in Cox v. Louisiana, n50 an effective assault accomplished through the intimidating effect of words -- buttressed by their relationship to a history of present and past mistreatment -- should not be immune from legal sanction merely because words are the weapon of choice. n51 **Indeed, it may be dangerous for a targeted hearer to attempt to use a "marketplace" remedy of more speech because that may only provoke the accosting speaker into physical violence**. By holding in Chaplinsky v. New Hampshire that "fighting words" could legitimately be punished, the Court suggested that the marketplace of ideas offered no remedy to the po- liceman who was called a "damned fascist." According to later decisions of the Court, fighting words lack protection because they do not contribute to truth-seeking and are therefore not part of the marketplace of ideas.  They do not express opinion but are solely emotive. If the Court had believed the situation in Chaplinsky could have been remedied by discussion of the falsehood and fallacies of the speaker's proposition, it would not have upheld Chaplinsky's conviction. n56 If there had been time "to expose through discussion the falsehood and fallacies, to avert the evil by the process of education, the remedy to be applied" would have been "more speech, not enforced silence." Thus, the Chaplinsky decision represents the Court's underlying recognition that some upsetting words, when personally directed to a particular target, may be punished le- gitimately by the state. **Therefore, more speech cannot readily eliminate the pressure for the target of a group-based epithet to escape and avoid the university environment or her reinforced belief that she does not belong at the university. Once the target has been jostled, the damage is done**. She may be upset for the next hour, the next week, or for her entire lifetime as a result of repeated incidents. Must she be forced constantly to respond with analytical argument to each verbal assault? The answer is plainly "no" for two reasons. First, as argued below, she has a right to be left alone from directly assaultive confrontations, even in public. Second, she cannot possibly respond within the marketplace of ideas to a communication that is es- sentially and primarily assaultive and therefore outside the realm of ideas. **Rational argument will not remedy the intimidation and fear visited upon the target of a group-based epithet.**

#### Minority voices are ignored in the marketplace of ideas if we allow hate – empirics go neg.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “THE SPEECH WE HATE”: FIRST AMENDMENT TOTALISM, THE ACLU, AND THE PRINCIPLE OF DIALOGIC POLITICS.” *Arizona State Law Journal.* Winter 1995. RP

With hate speech and pornography, heeding the ACLU's totalist argument introduces special dangers of its own. **Hate speech lies at the periphery of the First Amendment, as the proponents of the totalist argument quickly concede. Yet the reason why hate speech does so is that it implicates the interest of another group, minorities, in not being defamed, reviled, stereotyped, insulted, badgered, and harassed. Permitting a large number of social actors to portray a relatively powerless social group in this fashion helps construct a stigma-picture or stereotype that describes members of the second group as lascivious, lazy, carefree, immoral, stupid, and so on. This stereotype guides action, making life much more difficult for minorities in transactions that clearly matter**: getting a job, renting an apartment, hailing a cab. But it also diminishes the credibility of minority speakers, inhibiting their ability to have their points of view taken seriously, in politics or anywhere else-surely a result that is at odds with the First Amendment and the marketplace of ideas. This is an inevitable consequence of treating peripheral regions of a value as entitled to the same weight we afford that value when it is centrally implicated: We convey the impression that those other values-the ones responsible for the continuum in the first place-are of little worth. And when those other values are central to the social construction of a human being or social group, the dangers of undervaluing their interests increase sharply. Their interests are submerged today-in the valuing a court or decisionmaker is asked to perform. And their interests are submerged in the future, because they are thereafter the bearers of a stigma, one which means they need not be taken fully into account in future deliberations. Permitting one social group to speak disrespectfully of another habituates and encourages speakers to continue speaking that way in the future. The way of speaking becomes normalized, inscribed in hundreds of plots, narratives, and scripts; it becomes part of culture, what everyone knows. The reader may wish to reflect on changes he or she surely has observed over the last fifteen years or so**. During the civil rights era of the sixties and early seventies, African- Americans and other minorities were spoken of respectfully. Then, beginning in the late seventies and eighties, racism was spoken in code. Now, however, op-ed columns, letters to the editor, and political speeches deride and blame them outspokenly. Antiminority sentiment need no longer be spoken in code but can be proclaimed outright. We have changed our social construct of the black from unfortunate victim and brave warrior to welfare leeches, unwed mothers, criminals, and untalented low-IQ affirmative action beneficiaries who take away jobs from more talented and deserving whites. The slur, sneer, ethnic joke, and most especially face- to-face hate speech are the main vehicles that have made this change possible.**

#### Free speech has become a hegemonic ideology that prevents agonistic democracy – it becomes incontestable.

**Cammaerts:** Cammaerts, Bart [Department of Media and Communications, The London School of Economics and Political Science] “Radical pluralism and free speech in online public spaces: the case of North Belgian extreme right discourses.” LSE Research Online. 2009. RP

**It could be argued that while freedom of speech is considered one of the cornerstones of a democracy, it is at the same time also one of the most contested rights**. The recent Danish cartoons controversy depicting the prophet Muhammad, deemed to be blasphemous by Sunni Muslims, is a case in point (Sturges, 2006; Post, 2007). From a liberal and rather procedural perspective on democracy, freedom of speech and the press needs to be almost absolute, preventing state interference in determining which speech is acceptable and which not (Dworkin, 1994). **However, in democratic societies embedded in the social responsibility tradition, freedom of speech is more carefully weighed against other rights and protections and considered relative rather then absolute** (Lichtenberg, 1990). The US First Amendment of the Constitution epitomises the absolutist perspective. It states that ‘Congress shall make no law ... abridging the freedom of speech, or of the press’. Embedded in a tradition of individualism and libertarianism, and a firm belief in the need for citizens to be protected from the state, the freedom to be able to say what on wants, when and how, is sacred. **However, by protecting the content of all speech in such an absolute way, ‘the action that the speech performs’ (Butler, 1997: 72) is not taken into consideration.** As such, fairly rigid dichotomy is being constructed between the marketplace of ideas and social action. **Furthermore, the First Amendment discourse has become truly hegemonic – a dogmatic ideology in itself, which leads Schauer (1995: 13) to argue that there is ‘little free thought about free thought, little free inquiry about free inquiry and little free speech about free speech’. Although freedom of speech is undeniably a highly valued right of any democracy, it does not take priority over all other rights and liberties at all times, not even in the US.** Anti-defamation legislation, laws against obscenity, consumer and even copyright protection illustrate this clearly. Furthermore, in the 1950s and beyond the freedom of speech for US socialists and communists was seriously curtailed (Rosenfeld, 2001: 12). Concerning the relationship between freedom of speech and hate speech the issues are, however, much more complicated. While incitement to violence is outlawed, hate speech is protected by the First Amendment doctrine. In this regard, Matsuda (1993: 31-32) points out that ‘people are free to think and say what they want, even the unthinkable. They can advocate the end of democracy’, and furthermore ‘expressions of the ideas of racial inferiority or racial hatred are protected’. The claim by Schauer that there is very little free speech about the freedom of speech and Matsuda’s argument that even the end of democracy can be called for, are not entirely convincing, even within the liberal paradigm and the procedural view of democracy. Popper’s ‘paradox of tolerance’ is a good example of this. According to Popper (1965: 265) an open and tolerant society cannot survive if tolerance is unlimited: ‘**Unlimited tolerance must lead to the disappearance of tolerance. If we extend unlimited tolerance even to those who are intolerant, if we are not prepared to defend a tolerant society against the onslaught of the intolerant, then the tolerant will be destroyed, and tolerance with them.**’

#### Agonism demands the limiting of speech that shuts off further engagement – hate speech should be limited.

**Cammaerts:** Cammaerts, Bart [Department of Media and Communications, The London School of Economics and Political Science] “Radical pluralism and free speech in online public spaces: the case of North Belgian extreme right discourses.” LSE Research Online. 2009. RP

**The harm-principle, initially introduced by Mill, himself a strong advocate of free speech and liberalism also attests to the existence of debate within the liberal free speech tradition. The harm-principle stipulates the conditions under which among others free speech could be curtailed: *‘the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others’*.** (Mill, 1978: 9). However, given his liberal background, ‘doing harm to others’ has to be seen here in an individualistic sense and does not extend to collective harm. Much of hate speech would be allowed, as it is argued that it does not provoke direct harm to another individual. Opposed to an individualised and formalised conception of democracy and free speech - detached from action and conceiving ‘the commons’ as a marketplace of ideas, is the notion of democracy as a process, as ‘a promise ... the endless process of improvement and perfectability ...’ (Derrida, 1997: 5). **Democracy is thus not merely a method for decision-making and electing ruling elites (Schumpeter, 1973), but embedded in everyday life and practices and concerned with values such as equality, protection against the market, freedom of speech and social responsibility, leading to a social contract between the citizen and the state** (Rousseau, 1977). **This more positive emancipatory perception of the state has led to a more balanced and relativistic approach to freedom of speech. As such, in many countries a collective – rather then an individualistic – harm-principle prevails over the freedom of speech principle allowing for direct (legal) intervention when it concerns racism and discrimination. In addition to this, Feinberg’s (1985) offence-principle is also often invoked by advocates of limits to free speech. Even within the tradition of radical democracy where a radical pluralism of idea’s and voices is deemed beneficial for democracy, a hegemony of basic democratic values is considered crucial**. Echoing Popper, but clearly from another political paradigm, Mouffe (2005: 120) argues that ‘*[a] democracy cannot treat those who put its basic institutions into question as legitimate adversaries.’.* **As a result of this and contrary to the US, many European countries as well as countries such as Canada, Brazil, Australia and New Zealand have adopted quite stringent legislation to counter hate-speech and the incitement of racial and ethnic hatred. Some countries also voted legislation outlawing holocaust denial or revisionist discourses. In Germany parties with a fascist ideology can be forbidden.**

#### Free speech will ONLY BE USED BY THE WHITE MAJORITY – blacks fear hate speech and will stay home

**Fang:** Fang, Marina [Contributor, The Huffington Post] “Most College Students Want Free Speech on Campuses – But Not When It’s Hate Speech.” *Huffington Post.* April 2016. RP

**But students understand the limitations of free speech policies, especially with regard to discriminatory and offensive rhetoric. In recent months, many students of color have called on their college administrators to more fully address racism on campuses**, arguing that their campuses do not promote openness and diversity**. “Students do appear to distinguish controversial views from what they see as hate speech — and they believe colleges should be allowed to establish policies restricting language and certain behavior that are intentionally offensive to certain groups**,” the survey’s organizers wrote. Yet about 54 percent of students said that “the climate on campus prevents some people from saying what they believe because others might find it offensive.” Gallup, in collaboration with the Knight Foundation and the Newseum Institute, surveyed 3,000 students between the ages of 18 and 24 attending four-year colleges and universities in the United States. Amid a wave of incidents involving free speech and protests on college campuses, the survey’s organizers sought to gather students’ opinions about the First Amendment. **The survey noted that race plays a particular role in college students’ perceptions of First Amendment freedoms. For example, only 39 percent of the black students in the survey reported feeling less confident in the right to peacefully assemble, compared to 70 percent of white students. S**tudents are highly distrustful of the press. Nearly 60 percent of the students surveyed “have little or no trust in the press to report the news accurately and fairly,” and many expressed mixed opinions about the media’s coverage of campus protests. While the vast majority of students surveyed said that the press should generally have unrestricted access to campus protests, close to half said that in some cases, there can be reasons to bar the press, like if protesters think that the reporter may be biased, or whether “the people at the protest say they have a right to be left alone.” **The survey indicated that students are also concerned about the use of social media, with many noting that they feel that it can lead to uncivil and hateful discussions and that it can be easy to express opinions anonymously.** For example, Yik Yak, a popular social network on college campuses, allows anonymous postings. Many college students have reported seeing hateful Yik Yak posts, increasing pressure on the company to crack down on people who use the app to harass others.

#### Not restricting speech means lesser voices get shouted over by loud, dominant voices

**Bunker**: Bunker, Matthew D. [Professor, University of Alabama] “Critiquing Free Speech: First Amendment Theory and the Challenge of Interdisciplinarity.” 2001. RP

**Other critiques of marketplace theory have focused on the analogy between it and laissez-faire economics**, which, of course, gives the theory part of its intuitive appeal (at least to some). **Much as Adam Smith’s invisible hand was claimed to produce the optimal production of competitively priced goods and services, marketplace speech theory seems, to some, to assume a similar mechanism that produces truth. Some theorists have suggested a kind of “market failure” analysis by noting that, in the real world, certain dominant groups control the mass media and tend to exclude viewpoints that challenge the status quo. Legal scholar Jerome Barron was an early advocate of the view that the marketplace is skewed away from nonmainstream ideas and that there should be a right of access to the mass media for individuals and groups advocating such ideas. Much as antitrust law operates to break up anticompetitive practices in the economic markets, perhaps courts should abandon the myth of the perfect marketplace of ideas and enforce reforms to ensure that nonmainstream groups and ideas have a sufficient voice to allow the marketplace to function properly**. Of course, recent developments toward the demassification of commu- nication, such as the rise of the Internet, may at least partially undercut the thesis that the communication channels are monopolized by a powerful

#### Racist speech destroys the marketplace of ideas

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “If He Hollers Let Him Go: Regulating Racist Speech on Campus.” *Duke Law Journal.* 1990. RP

**Blacks and other people of color are equally skeptical about the ab- solutist argument that even the most injurious speech must remain un- regulated because in an unregulated marketplace of ideas the best ideas will rise to the top and gain acceptance**. 132 Our experience tells us the opposite. We have seen too many demagogues elected by appealing to America's racism. We have seen too many good, liberal politicians shy away from the issues that might brand them as too closely allied with us. **The American marketplace of ideas was founded with the idea of the racial inferiority of non-whites as one of its chief commodities, and** ever since the market opened, racism has remained its most active item in trade. But it is not just the prevalence and strength of the idea of racism that makes the unregulated marketplace of ideas an untenable paradigm for those individuals who seek full and equal personhood for all. **The real problem is that the idea of the racial inferiority of non-whites infects, skews, and disables the operation of the market** (like a computer virus, sick cattle, or diseased wheat). **Racism is irrational and often unconscious. Our belief in the inferiority of non-whites trumps good ideas that contend with it in the market, often without our even knowing it. In addition, racism makes the words and ideas of blacks and other de- spised minorities less saleable, regardless of their intrinsic value, in the marketplace of ideas.** 136 **It also decreases the total amount of speech that enters the market by coercively silencing members of those groups who are its targets**.137 Racism is an epidemic infecting the marketplace of ideas and ren- dering it dysfunctional. Racism is ubiquitous. We are all racists. 138 Ra- cism is also irrational. Individuals do not embrace or reject racist beliefs as the result of reasoned deliberation.139 For the most part, we do not recognize the myriad ways in which the racism pervading our history and culture influences our beliefs. In other words, most of our racism is unconscious. The disruptive and disabling effect on the market of an idea that is ubiquitous and irrational, but seldom seen or acknowledged, should be apparent. **If the community is considering competing ideas about pro- viding food for children, shelter for the homeless, or abortions for preg- nant women, and the choices made among the proposed solutions are influenced by the idea that some children, families, or women are less deserving of our sympathy because they are not white, then the market is not functioning** as either John Stuart Mill or Oliver Wendell Holmes en- visioned it. In John Ely's terms there is a "process defect."14'

#### Racist speech creates process defects that states have an obligation to remove from the marketplace of ideas

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “If He Hollers Let Him Go: Regulating Racist Speech on Campus.” *Duke Law Journal.* 1990. RP

\*\*\*Bracketed for offensive language

**Professor Ely coined the term "process defect" in the context of de- veloping a theory to identify instances in which legislative action should be subjected to heightened judicial scrutiny under the equal protection clause. Ely argues that the courts should interfere with the normal majoritarian political process when the defect of prejudice bars groups subject to widespread vilification from participation in the political process** and causes governmental decisionmakers to misapprehend the costs and benefits of their actions. **This same process defect that excludes vilified groups and misdirects the government operates in the market- place of ideas.** Mill's vision of truth emerging through competition in the marketplace of ideas relies on the ability of members of the body politic to recognize "truth" as serving their interest and to act on that recognition. As such, this vision depends upon the same process that James Madison referred to when he described his vision of a democracy in which the numerous minorities within our society would form coalitions to create majorities with overlapping interests through pluralist wheeling and dealing. **Just as the defect of prejudice [obscures] ~~blinds~~ the white voter to interests that overlap with those of vilified minorities, it also [obscures] ~~blinds~~ him to the "truth" of an idea or the efficacy of solutions associated with that vilified group**. And just as prejudice causes the governmental deci- sionmakers to misapprehend the costs and benefits of their actions, it also causes all of us to misapprehend the value of ideas in the market. **Prejudice that is unconscious or unacknowledged causes even more distortions in the market. When racism operates at a conscious level, opposing ideas may prevail in open competition for the rational or moral sensibilities of the market participant. But when an individual is unaware of his prejudice, neither reason nor moral persuasion will likely succeed**. 146 **Racist speech also distorts the marketplace of ideas by muting or devaluing the speech of blacks and other non-whites**. An idea that would be embraced by large numbers of individuals if it were offered by a white individual will be rejected or given less credence because its author be- longs to a group demeaned and stigmatized by racist beliefs.

#### Free speech means less discussion

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “If He Hollers Let Him Go: Regulating Racist Speech on Campus.” *Duke Law Journal.* 1990. RP

**Finally, racist speech decreases the total amount of speech that reaches the market**. I noted earlier in this Article the ways in which racist speech is inextricably linked with racist conduct. The primary purpose and effect of the speech/conduct that constitutes white supremacy is the exclusion of non-whites from full participation in the body politic. Sometimes the speech/conduct of racism is direct and obvious. **When the Klan burns a cross on the lawn of a black person who joined the NAACP or exercised his right to move to a formerly all-white neighborhood, the effect of this speech does not result from the persuasive power of an idea operating freely in the market. It is a threat, a threat made in the context of a history of lynchings, beatings, and economic reprisals that made good on earlier threats, a threat that silences a potential speaker. The black student who is subjected to racial epithets is likewise** threatened and silenced. Certainly she, like the victim of a cross-burning, may be uncommonly brave or foolhardy and ignore the system of violence in which this abusive speech is only a bit player. **But it is more likely that we, as a community, will be denied the benefit of many of her thoughts and ideas**. 151 Again MacKinnon's analysis of how first amendment law miscon- strues pornography is instructive. She notes that in concerning them- selves only with government censorship, first amendment absolutists fail to recognize that whole segments of the population are systematically silenced by powerful private actors. "**As a result, [they] cannot grasp that the speech of some silences the speech of others in a way that is not simply a matter of competition for airtime."'**

#### Unlimited free speech chills deliberation – people are damaged and afraid to speak out.

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “The Debates Over Placing Limits on Racist Speech Must Not Ignore the Damage It Does to Its Victims.” *The Chronicle of Higher Education.* 1989. RP

**If the purpose of the First Amendment is to foster the greatest amount of speech, racial insults disserve that purpose. Assaultive racist speech functions as a preemptive strike. The invective is experienced as a blow, not as a proffered idea, and once the blow is struck, it is unlikely that a dialogue will follow. Racial insults are particularly undeserving of First Amendment protection because the perpetrator's intention is not to discover truth or initiate dialogue but to injure the victim. In most situations, members of minority groups realize that they are likely to lose if they respond to epithets by fighting** and are forced to remain silent and submissive.

#### Hate speech doesn’t add anything to the conversation and just damages people

**McConnell:** McConnell, Reed E. [Writer and contributor, The Harvard Crimson] “Why Harvard's Hate Speech Policies Are Necessary.” *The Harvard Crimson.* April 2012. RP

**The most common argument I have encountered for unrestricted free speech on college campuses is that if we prohibit people from saying certain things, they will simply never talk about them**. As a result, their prejudice and oppression—the problems that we are trying to stamp out in the first place with restrictions on speech—will continue quietly, unchecked. However, the argument goes, if we allow people to express these thoughts openly, then there will be discussion about them that leads to greater understanding. This was the view expressed by the member of the Harvard Libertarian Forum quoted in the article, and one that I think is fundamentally misguided. **There certainly should be dialogue around issues of racism, sexism, homophobia, and other forms of oppression**. If someone has prejudices, a good way to erase these prejudices can indeed be to engage in dialogue with that person in order to understand where their attitude is coming from and educate them about the moral and logical fallacies of their prejudice. **But there is also a need to protect people from having violence perpetrated against them. When someone calls a black person the “n” word out of hatred, he or she is not expressing a new idea or outlining a valuable thought. They are committing an act of violence. Speech has great power. It can—and often does—serve as a tool to marginalize and oppress people. Laws that restrict hate speech simply seek to prevent violence against marginalized**, oppressed groups in order to prevent them from becoming further marginalized and oppressed. There are freedoms to do things, and there are freedoms from things. **When our freedom to speak our mind impinges on someone’s freedom from fear, or on someone’s right to feel safe in their community, then that freedom should not stand unregulated in any group that wishes to create a safe and respectful society for its members. We cannot create a respectful learning environment at our university if students from marginalized groups feel that their administration condones acts of violence against them**. University regulations against hate speech are entirely necessary for maintaining respect and dignity among the student body, and Harvard’s policies to this end are well thought-out and fair—and certainly not worthy of protest.

### A2 Academic Freedom

#### The Aff makes things worse – protests and movements against the university just get coopted – more radical demands like divestment are needed instead

**Chatterjee et al:** Chatterjee, Piya [Dorothy Cruickshank Backstrand Chair of Gender and Women’s Studies Chair of the Feminist, Gender, and Sexuality Studies Department, Scripps College] and Sunaina Maira [Professor of Asian American Studies, UC Davis]. *The Imperial University: Academic Repression and Scholarly Dissent*. University of Minnesota Press, 2014. RP

-People become satisfied and don’t do anything more radical

-Publishing articles not the same as divestment

**But the question remains, is scholarly dissent simply the other face of the coin of academic repression—that is, are expressions of protest doomed to be incorporated into the imperial cartographies they resist or it possible for them to create alternative mappings that resist recuperation?** The chapters in this book allude to this enduring dilemma about resistance from within, directly and indirectly; some authors suggest that what is needed is a new paradigm that reframes the architecture of repression. For example, across distinctly different sites of (neo)colonialism and global capitalism, **Oparah argues for an unmasking of a transnational carceral logic of “new” empire that traces between the imperial core and its peripheries. She argues that it is not more, “countercarceral” knowledge that scholars resisting the “militarization and prisonization of academia” must produce in order to realize a postcarceral academy. Rather, academics must use their privilege to chal- lenge the complicity of the academy with, and call for divestment from, prison and military industries. As Oparah and also Prashad eloquently suggest, the university must be reimagined as a site of solidarity with those engaged in struggles against neoliberal capitalism and organizing for the abolition of the academic-MPIC.**

#### Academic freedom is a trap to recreate dominant ideals, prevent democracy, and shield effective critique.

**Chatterjee et al:** Chatterjee, Piya [Dorothy Cruickshank Backstrand Chair of Gender and Women’s Studies Chair of the Feminist, Gender, and Sexuality Studies Department, Scripps College] and Sunaina Maira [Professor of Asian American Studies, UC Davis]. *The Imperial University: Academic Repression and Scholarly Dissent*. University of Minnesota Press, 2014. RP

The answers lie, to a large extent, in the definition and utilization of aca- demic freedom as a liberal principle and in the paradoxes that this liberal politics generates in the academy and beyond. **Prashad argues that the liberal precept of academic freedom draws on John Stuart Mills’s conception of the necessity of “contrary opinions” for providing checks and balances for social norms but not for enabling a “transformative political agenda.”** A Eurocentric genealogy of academic freedom would trace it to notions of critical pedagogy in German universities in the eighteenth and nineteenth centuries, intertwined with notions of economic and political liberalism embedded in Enlightenment modernity. Cary Nelson, the renowned president of the American Association for University Professors (AAUP), who for many U.S. academics represents the face of institutionalized academic freedom, writes, “Academic freedom thus embodies Enlightenment commitments to the pursuit of knowledge and their adaption to di erent political and social realities.”78 AAUP issued the Declaration of Principles on Academic Freedom and Academic Ten- ure in 1915,79 and for some scholars, such as Robert Post, this declaration is the “greatest articulation of the logic and structure of academic freedom.”80 According to Post, this is because it conceptualizes academic freedom as based on “compliance with professional norms” speci c to academic labor and on the safeguarding of scholarly expertise that produces “professional self-regulation” and “professional autonomy” for faculty.81 Yet even Post acknowledges that there is a paradox inherent in this conceptualization based on academic labor, for these professional norms are not so easily de ned and so academic freedom is “simultaneously limited by, and independent of, pro- fessional norms.”82 A critic of the AAUP’s unwillingness to protect scholars targeted by McCarthyism suggests the AAUP upholds procedural freedom without an understanding of the importance of expanding its understanding of political freedom: “**Stripped of its rhetoric, academic freedom thus turns out to be an essentially corporate protection. And as we trace its develop- ment during the Cold War, we should not be surprised to nd that it was involved more o en to defend the well-being of an institution rather than the political rights of an individual.**”83 Other scholars, such as Judith Butler, also point out that the AAUP’s formulation of academic freedom intended to “institutionalize a set of employer-employee relationships in an academic setting,” not to guarantee academic freedom as an individual right.84 While she agrees with Post that academic freedom should not be rooted in “individual freedom” or simply in First Amendment rights of freedom of expression, she goes further to point to the collusion between the university and the state in de ning pro- fessional norms and professional freedom in scholarship and to emphasize that expectations of what is permissible for academics are always historically evolving and o en politically motivated. So these professional constraints are contingent and contested, not xed; Butler argues, “As faculty members, we are constrained to be free, and in the exercise of our freedom, we con- tinue to operate within the constraints that made our freedom possible in the rst place.”85 We take these critiques of an individually based, constrained, and “weak” notion of academic freedom further, arguing that academic freedom is per- haps not tenable as a basis for a just struggle for “freedom,” if that struggle needs to be de ned by a rmative principles rooted in progressive or le conceptions of freedom, justice, and equality, as suggested by Prashad. In other words, academic freedom is not, and should not be, the holy grail of dissent. **Academic freedom is generally understood—and operationalized in the U.S. academy today—as an ideologically neutral principle of freedom of expression and First Amendment rights. It is thus a libertarian, not just liberal, notion of individual freedom, and it is framed as a core principle of Western modernity and democracy, serving both the liberal-le and the conservative-right. In this model, neo-Nazis or antiabortion advocates have the same rights to academic freedom in the university as do queer activists or antiwar proponents. There is no progressive ethos built into the principle of academic freedom, and this is what makes it easily available for recupera- tion and resort by the right as much as the le . Prashad makes the important observation that even the academic left o en tends to take refuge in the “safe harbor” of academic freedom rather than engaging in a struggle for “genuine campus democracy” and labor rights for workers on campuses and for the right to education as a public good and for a “culture of solidarity,” as evoked by Dominguez. Perhaps one of the most ironic examples of what could be described as the use of academic freedom as a smoke screen for larger struggles over other kinds of freedoms was the cancellation of the AAUP’s own conference on academic boycotts, slated to be held in 2006 at the Rockefeller Confer- ence Center in Bellagio, Italy.** e conference featured a diverse group of scholars with a range of views on the strategy of academic boycott—some in favor, some opposed—within the context of the emerging, global debate about the Palestinian call for an academic boycott of Israeli academic institu- tions, inspired by the boycott of South African institutions in the apartheid era. However, under mounting pressure from Israeli and pro-Israel academ- ics, the meeting was cancelled. e AAUP, instead, published online many of the papers intended for presentation at the conference, but it also issued a report strongly condemn- ing the academic boycott. Joan Scott and Harold Linder, who had helped organize the conference and later edited the online publication, expressed dismay that the conference was canceled, but they also concluded that the AAUP’s “principled opposition to academic boycott” was an expression of its commitment to academic freedom.86 While Joan Scott later revised her position in an eloquent essay,87 this seemingly contradictory position is an argument that is o en used in opposition to the academic boycott, in the case of Israel, and it expresses a deeper paradox that illuminates the fault line at the core of academic freedom—as does the entire saga of the failed con- ference. Is it possible that closing o the possibility of a boycott of academic institutions—in the context of their complicity with military occupation and apartheid policies—is an expression of academic freedom, or is it a denial of that academic freedom? And whose academic freedom is being upheld? Lisa Taraki, a sociologist at Birzeit University in the West Bank who was scheduled to present at Bellagio, noted in her paper, “I think that the abstract ideas of academic freedom and the free exchange of ideas cannot be the only norms in uencing the political engagement of academics. O en, when oppression characterizes all social and political relations and structures, as in the case of apartheid South Africa or indeed Palestine, there are equally important and sometimes more important freedoms that must be fought for, even—or I would say especially—by academics and intellectuals.”88 **Omar Barghouti, a Palestinian intellectual who is, like Tarakai, a cofounder of the Palestinian Academic and Cultural Boycott of Israel (PACBI), argued that the AAUP was “privileging academic freedom as above all other freedoms.” Citing Judith Butler, he argued that this position excluded the freedom of “academics in contexts of colonialism, military occupation, and other forms of national oppression where ‘material and institutional foreclosures . . . make it impossible for certain historical subjects to lay claim to the discourse of rights itself ’. . . . Academic freedom, from this angle, becomes the exclu- sive privilege of some academics but not others.**”89 Barghouti and Taraki make two crucial points: First, they state that academic freedom cannot trump other rights to freedom (and other freedoms)—the right to freedom of mobility for students and scholars to attend college, to travel to conferences, and to do research; the collective right to self-determination; the freedom from occupation and racial segrega- tion; and, in essence, the freedom to live in peace, dignity, and equality. As suggested by our introductory vignettes, the freedom and right to education of students living in zones of occupation and war overseas must be linked to the freedom of students and scholars working—and protesting—within the imperial university. Proponents of the academic boycott of Israeli institu- tions argued that the campaign is, thus, in support of and produces academic freedom, and also supports human rights for all—as it was in the boycott of South African institutions. Second, they allude to the selectivity of the prin- ciple of academic freedom—why South Africa and not Palestine?—and the ways in which the U.S. academy (like the Israeli academy) and professional associations such as the AAUP are rmly embedded in a political context while pretending to be outside or above it.90 is adjudication of neutrality and self-professed impartiality is, in fact, a political stance, as argued by Salaita and illustrated by De Genova’s re ections on the limits of academic solidarity with radical critiques of U.S. imperialism. e holy grail of academic freedom shores up the political com- mitments and investments—not to mention the intellectual freedoms—of powerful academics and constituencies and fails to protect the commitments and interventions of the heretics who are less powerful or far outside the sta- tus quo. is is powerfully illustrated by the intense political campaign tar- geting De Genova for his “blasphemous” criticism of U.S. military violence and Dominguez’s farcical play about his experience of being investigated by the FBI and UC San Diego due to the Electronic Disturbance eater’s “vir- tual sit-in” protesting the UC fee hikes and the Transborder Immigrant Tool project.91 We must ask, why is it that some cases of academic “blasphemy” provoke an outpouring of sympathy and support from colleagues while other cases are considered too heretical to warrant (ready) solidarity?

#### Demands for academic freedom can’t solve the firing of professors – the university will just make different excuses

**Chatterjee et al:** Chatterjee, Piya [Dorothy Cruickshank Backstrand Chair of Gender and Women’s Studies Chair of the Feminist, Gender, and Sexuality Studies Department, Scripps College] and Sunaina Maira [Professor of Asian American Studies, UC Davis]. *The Imperial University: Academic Repression and Scholarly Dissent*. University of Minnesota Press, 2014. RP

**The AAUP’s Seligman Report of 1915 reveals that the notion of academic freedom was, in fact, “deeply enmeshed” with the “overall status, security, and prestige of the academic profession**.”50 **Setting up procedural safeguards was important, but its language regarding “appropriate scholarly behavior” and cautiousness about responding to controversial matters in the academy (by ensuring that all sides of the case were presented) suggested the limits of dissent. Academic freedom, then, is a notion that is deeply bound up with academic containment—a paradox suggested in our earlier discussion of protest and inclusion/incorporation in the academy and one that has become increasingly institutionalized since the formation of the AAUP. The academic repression of the McCarthy era received its impetus from President Truman’s March 22, 1947, executive order that “established a new loyalty secrecy program for federal employees**.” However, the roots of insti- tutional capitulation—by both administrators and faculty—when the state targeted academics who were communists or viewed as “sympathizers” are much deeper. **It is also signi cant that the notion of “appropriate behavior” for faculty rested on a majoritarian academic “consensus” about “civil” and “collegial” comportment. For example, Ellen Schechter notes cases prior to the Cold War where scholars were red not necessarily for their political a liations per se but due to “their outspoken-ness.”51 is repression from within—not just beyond—the academy** reveals the cultures of academic con- tainment where, as Pulido, Gumbs, and Rojas remind us, certain kinds of “unruliness” must be managed or excised.

#### Academic freedom is a palliative

**Chatterjee et al:** Chatterjee, Piya [Dorothy Cruickshank Backstrand Chair of Gender and Women’s Studies Chair of the Feminist, Gender, and Sexuality Studies Department, Scripps College] and Sunaina Maira [Professor of Asian American Studies, UC Davis]. *The Imperial University: Academic Repression and Scholarly Dissent*. University of Minnesota Press, 2014. RP

Barghouti and Taraki make two crucial points: **First, they state that academic freedom cannot trump other rights to freedom (and other freedoms)—the right to freedom of mobility for students and scholars to attend college, to travel to conferences, and to do research; the collective right to self-determination; the freedom from occupation and racial segrega- tion; and, in essence, the freedom to live in peace, dignity, and equality**. As suggested by our introductory vignettes, the freedom and right to education of students living in zones of occupation and war overseas must be linked to the freedom of students and scholars working—and protesting—within the imperial university. Proponents of the academic boycott of Israeli institu- tions argued that the campaign is, thus, in support of and produces academic freedom, and also supports human rights for all—as it was in the boycott of South African institutions. Second, they allude to the selectivity of the prin- ciple of academic freedom—why South Africa and not Palestine?—and the ways in which the U.S. academy (like the Israeli academy) and professional associations such as the AAUP are rmly embedded in a political context while pretending to be outside or above it. This adjudication of neutrality and self-professed impartiality is, in fact, a political stance, as argued by Salaita and illustrated by De Genova’s reflections on the limits of academic solidarity with radical critiques of U.S. imperialism. **The holy grail of academic freedom shores up the political com- mitments and investments—not to mention the intellectual freedoms—of powerful academics and constituencies and fails to protect the commitments and interventions of the heretics who are less powerful or far outside the sta- tus quo**. is is powerfully illustrated by the intense political campaign tar- geting De Genova for his “blasphemous” criticism of U.S. military violence and Dominguez’s farcical play about his experience of being investigated by the FBI and UC San Diego due to the Electronic Disturbance eater’s “vir- tual sit-in” protesting the UC fee hikes and the Transborder Immigrant Tool project.91 **We must ask, why is it that some cases of academic “blasphemy” provoke an outpouring of sympathy and support from colleagues while other cases are considered too heretical to warrant (ready) solidarity**? Nelson’s own writing on academic freedom is instructive in revealing the AAUP president’s political position on academic freedom and its limits— just one instance of exceptionalisms in the intense debate about academic freedoms and heresies among distinguished, progressive scholar-activists. In No University Is an Island: Saving Academic Freedom, Nelson denounces “major fractions of the Le ,” especially academics, who have apparently “grown increasingly hostile and unforgiving toward Israel.”92 Nelson’s sweep- ing statements include anecdotal observations of departments (unnamed) that have apparently refused to consider job candidates who do not support the two-state solution or who support Israel, proclaiming without any spe- ci c evidence that there is a hostile academic environment for “faculty and students with sympathies for Israel.”93 One wonders if Nelson is speaking of the same U.S. academy that the authors in this book—and so many other scholars—inhabit and work in or whether he is, indeed, living on “an island.” We discuss the Bellagio train wreck and Nelson’s position here because of the prominent role of the AAUP in adjudicating and de ning the boundar- ies of academic freedom—and academic heresies—as evident in more recent controversies.94 Despite the AAUP’s otherwise impressive record on issues related to academic labor, the issue of Palestine-Israel seems to be a sticking point for the organization, as is the case in so many other liberal-progressive spaces, including academic ones—precisely because it is obfuscated through a discourse of academic freedom. is illustrates the fault lines in a principle of academic freedom that evacuates politics, in selective instances, or cir- cumscribes and contains what is proper politics for academics, shaping the stance that scholars can or should take in response to twenty- rst-century occupation, settler colonialism, wars, apartheid, and encampment. **Steven Best, Anthony Nocella II, and Peter McLaren, in their edited vol- ume on academic repression, incisively observe that academic freedom, in fact, functions as an “alibi for the machinery of academic repression and control” and ends up justifying the “absorption of higher education into the larger constellation of corporate-military power.”95 Academic repression, they argue, is constitutive of the academic-military-industrial complex, a framework that situates the university squarely within, and not outside of, the network of state apparatuses of control, discipline, surveillance, carcer- ality, and violence, as alluded to by Dominguez and as argued by Godrej, Oparah, and Gumbs. In other words, as Taraki and Barghouti also suggest, it does not make sense (for progressives-le ists) to fight for academic freedom outside of the struggle against neoliberal capitalism, racism, sexism, homophobia, warfare, and imperialism. To state it more clearly,** there can be no true “freedom” in the academy if there is no such freedom in society at large.

#### Academic freedom gets coopted by the military industrial complex and obscures the problem.

**Chatterjee et al:** Chatterjee, Piya [Dorothy Cruickshank Backstrand Chair of Gender and Women’s Studies Chair of the Feminist, Gender, and Sexuality Studies Department, Scripps College] and Sunaina Maira [Professor of Asian American Studies, UC Davis]. *The Imperial University: Academic Repression and Scholarly Dissent*. University of Minnesota Press, 2014. RP

**Steven Best, Anthony Nocella II, and Peter McLaren, in their edited vol- ume on academic repression, incisively observe that academic freedom, in fact, functions as an “alibi for the machinery of academic repression and control” and ends up justifying the “absorption of higher education into the larger constellation of corporate-military power.”**95 Academic repression, they argue, is constitutive of the academic-military-industrial complex, a framework that situates the university squarely within, and not outside of, the network of state apparatuses of control, discipline, surveillance, carcer- ality, and violence, as alluded to by Dominguez and as argued by Godrej, Oparah, and Gumbs. In other words, as Taraki and Barghouti also suggest, it does not make sense (for progressives-le ists) to ght for academic free- dom outside of the struggle against neoliberal capitalism, racism, sexism, homophobia, warfare, and imperialism. To state it more clearly, there can be no true “freedom” in the academy if there is no such freedom in society at large.96 e holy grail of academic freedom, de ned within the liberal param- eters critiqued by Prashad, has been institutionalized as a limited and prob- lematic horizon for progressive academic mobilization. **Academic freedom maintains the illusion of an autonomous university space in a militarized and corporate society such as the United States and in a “surveillance soci- ety and post-Constitutional garrison state” that continues to be consolidated under Obama, as suggested by Dominguez and other authors.97 is does not mean giving up entirely on invoking academic freedom, for it can be, and is, o en strategically used as a minimal line of defense to introduce criti- cal ideas and broaden public debates within the academy.** However, progres- sive campaigns organized around the principle of academic freedom o en run into a profound fault line in their mobilization, if not also organized around larger political principles. **In our experience, campaigns focused on organizing in defense of scholars targeted since 9/11, especially those work- ing in Middle East and Palestine studies, o en end up struggling with these same contradictions if they attempt to cohere simply around “academic free- dom” rather than a more rigorous (progressive) political consensus, given how fractured the academic le is when it comes to Middle East politics and Israel-Palestine. Critics of the academy, such as Readings, make a fundamental point:** “ e University is not going to save the world by making the world more true,” and it must be viewed as all institutions are, not as an exceptional space or site of radicalism and “redemption” but as a site where “academ- ics must work without alibis, which is what the best of them have intended to do.”98 **In other words, the university is an institution within an impe- rial nation-state—a point understated by Readings—and so any struggle waged within or against it must not romanticize its progressive possibilities and must be squarely situated within a struggle that extends beyond its hal- lowed walls. is is what the Occupy movement, discussed at the outset, attempted to do on many campuses, and this is also why it was so brutally suppressed—because it made a linkage between the university and larger structures of power, as in earlier movements of student uprising, that was fundamentally threatening to the imperial university.**

#### Academic freedom is not neutral – it only actually protects those in the majority – it’s even invoked to *justify firing professors.*

**Chatterjee et al:** Chatterjee, Piya [Dorothy Cruickshank Backstrand Chair of Gender and Women’s Studies Chair of the Feminist, Gender, and Sexuality Studies Department, Scripps College] and Sunaina Maira [Professor of Asian American Studies, UC Davis]. *The Imperial University: Academic Repression and Scholarly Dissent*. University of Minnesota Press, 2014. RP

-Didn’t protect people during McCarthyism

**Following from the production of manifest knowledges and logic of academic containment in the imperial university, the chapters in this section explore how liberal codes of academic freedom are undermined or consolidated as neoliberal privatization weakens spaces of critique in the academy. The chap- ters by De Genova, Prashad, and Dominguez in the concluding section of the book, as well as other chapters, critique what could be described as the “holy grail” of academic freedom, one of the pillars upon which academic liberalism builds its edi ce and which is central to the academic wars. We argue that there is a narrowing of the eld of possible dissent in the U.S. academy precisely because of the ways in which the repression of knowledge production and the resistance to academic repression are both constituted through notions of academic freedom and academic heresies**. We gestured earlier to how the development of “academic freedom” took place against the backdrop of World War I and the early twentieth century precisely because of the nonconformity of individual scholars in class and wartime politics. Academic freedom emerged as a way to both negotiate a sense of professional insecurity as well as construct a measured response to matters of “national interest” (such as anticapitalist or antiwar protest). is was a critical time for establishing the protocols of professionalism for aca- demia. Ellen W. Shrecker, in her magisterial study of McCarthyism’s e ects on the academy, argues that the pivotal Seligman Report by the AAUP in 1915 “reveals how deeply enmeshed the notion of academic freedom was with the overall status, security and prestige of the academic profession.”73 It is apparent that academic freedom continues to be fragile given the increas- ing professionalization of the academy and hypercompetitiveness of the aca- demic job market. Indeed, De Genova’s experience of “crossing the line” at Columbia Uni- versity, in the post-9/11 climate of hypernationalism, is part of a genealogy that he traces to 1917, when Columbia penalized two faculty members for their public opposition to World War I. A controversy arose at the time about the distinguished historian, Charles Beard, who remarked in 1916 (during debates about U.S. “neutrality”) that the “world’s strongest republic could certainly withstand the inconsequential e ort of a single ‘To Hell with the Flag’ comment.”74 Outraged trustees at Columbia interrogated Beard about his comment and political views in an unpleasant echo of De Genova’s own account of academic repression. ough Beard was eventually “exon- erated,” he resigned when his two colleagues at Columbia were terminated due to their political views. A powerful precedent about the boundaries of political—especially antistate—speech was set into motion. Where were “academic freedom” and the AAUP during this ferment? e newly created organization kept a distance from the unrest envelop- ing the Columbia campus and was “unwilling to o er its limited assistance to those being driven o campuses.”75 Schecter argues that the AAUP’s early discussions of academic freedom sought primarily to protect faculty from outsiders’ “meddling” with scholar’s teaching and research by setting up “procedural safeguards**.” But these safeguards could not adequately address political dissidence or any political positions that were considered “unsym- pathetic” by the majority of academics. What appeared to be “protection” was really about perceptions, and evaluations, of institutional loyalty and “appropriate” behavior that would not jeopardize the professionalism and status of academia. When the litmus test of the AAUP’s politics and “academic freedom” arrived four decades later, in the form of McCarthyite repression, the acad- emy’s capitulation to state imperatives and the subsequent destruction of many individual careers and lives should not come as a surprise. Prashad points out that faculty were expelled for their relationship to the Communist Party under the guise of defending academic freedom, for to be a Commu- nist was to be enslaved by dogma and to be unfree. Academic freedom was constructed through a negative and reactive polarity to create the narrow boundaries for “permissible dissent” rather than a positive protection in sup- port of dissent.** Clyde Barrow observes, “It created an intellectually defensible zone of political autonomy for the professoriate, which . . . su ciently circumscribed as to exclude as unscholarly whatever political behavior the leading member of the academic community feared might trigger outside intervention.” Even when university presidents could have protected their faculty, most did not, as in the case at the University of Washington dis- cussed by Prashad. e fact that some university administrators could, and did, resist assaults on academic freedom showed that universities could have de ed state repression—but most chose not to.

#### Academic freedom is Eurocentric and creates a static liberal subject

**Chatterjee et al:** Chatterjee, Piya [Dorothy Cruickshank Backstrand Chair of Gender and Women’s Studies Chair of the Feminist, Gender, and Sexuality Studies Department, Scripps College] and Sunaina Maira [Professor of Asian American Studies, UC Davis]. *The Imperial University: Academic Repression and Scholarly Dissent*. University of Minnesota Press, 2014. RP

**Clearly, if academic freedom is invoked as a “holy grail” in regulating and containing the proper subjects of the imperial nation, the “bad” citizen of the academy is considered heretical**. As Ricardo Dominguez and Pulido, Abowd, and De Genova eloquently discuss, acts of transgression of the boundaries of belonging to the academic nation illuminate how narrow, and fragile, the universe of dissent is. **While it is perhaps easy to pinpoint, if not always to counter, the campaigns of right-wing and conservative scholars and activists against academic dissent, these chapters highlight an important point—that for academics, censorship and repression generally comes wrapped in a lib- eral mantle, and it is waged through the language of diversity, dialogue, and, o en, academic freedom itself**. Right-wing and neoconservative activists—or what Prashad calls “cultural vigilantes”—in the culture wars have not only strategically reshaped the discourse of diversity and feminism, as alluded to earlier, but also appropriated the language of “academic freedom.” Indeed, right-wing groups such as Horowitz’s Students for Academic Freedom have used the notion of “intellectual pluralism” to police teaching and invoked academic freedom as a new ideological battle cry for the right. So the fol- lowing are the crucial questions: How is it possible to transform academic freedom into a justi cation for the closing down, rather than opening up, of intellectual and political debates? What inheres in the principle of academic freedom that allows it to be appropriated, apparently seamlessly, by those who align themselves with the political and economic status quo? **The answers lie, to a large extent, in the definition and utilization of aca- demic freedom as a liberal principle and in the paradoxes that this liberal politics generates in the academy and beyond**. Prashad argues that the lib- eral precept of academic freedom draws on John Stuart Mills’s conception of the necessity of “contrary opinions” for providing checks and balances for social norms but not for enabling a “transformative political agenda.” **A Eurocentric genealogy of academic freedom would trace it to notions of critical pedagogy in German universities in the eighteenth and nineteenth centuries, intertwined with notions of economic and political liberalism embedded in Enlightenment modernity.**

#### The Aff’s centering of academic freedom is regressive – we need broader political demands

**Chatterjee et al:** Chatterjee, Piya [Dorothy Cruickshank Backstrand Chair of Gender and Women’s Studies Chair of the Feminist, Gender, and Sexuality Studies Department, Scripps College] and Sunaina Maira [Professor of Asian American Studies, UC Davis]. *The Imperial University: Academic Repression and Scholarly Dissent*. University of Minnesota Press, 2014. RP

**The holy grail of academic freedom, defined within the liberal param- eters critiqued by Prashad, has been institutionalized as a limited and prob- lematic horizon for progressive academic mobilization. Academic freedom maintains the illusion of an autonomous university space in a militarized and corporate society such as the United States and in a “surveillance soci- ety and post-Constitutional garrison state” that continues to be consolidated under Obama, as suggested by Dominguez and other authors**. This does not mean giving up entirely on invoking academic freedom, for it can be, and is, o en strategically used as a minimal line of defense to introduce critical ideas and broaden public debates within the academy. **However, progres- sive campaigns organized around the principle of academic freedom o en run into a profound fault line in their mobilization, if not also organized around larger political principles. In our experience, campaigns focused on organizing in defense of scholars targeted since 9/11, especially those work- ing in Middle East and Palestine studies, o en end up struggling with these same contradictions if they attempt to cohere simply around “academic free- dom” rather than a more rigorous (progressive) political consensus**, given how fractured the academic le is when it comes to Middle East politics and Israel-Palestine.

### A2 Legal Precedent

#### Bans on hate speech have a positive spillover – they lead to other policies eradicating discrimination.

**Parekh:** Parekh, Bhikhu “Is There a Case for Banning Hate Speech?” *Cambridge University Press.* 2012.

-Study of Europe

-Bans not isolated – caused educational campaigns too

**It is sometimes argued that a ban on hate speech can easily become an end it itself and an excuse to avoid well-conceived antidiscrimination policies**. Although this can happen, as arguably it has in France, there is no obvious reason why it should. **As the cases of Britain, Netherlands, Germany, and Australia show, the ban on hate speech has gone hand in hand with a wider campaign to address the causes of racism, sexism, or homophobia by pressing for a well-worked-out strategy to tackle discrimination and disadvantage. This is not accidental and has a complex internal logic. Once people realize that ban on hate speech has made only a marginal difference in their lives, they look for the deeper causes and see the need for an antidiscrimination struggle in other areas of life. The ban on hate speech alerts the target groups to other goals to aim at and gives it the confidence to fight for them by actively participating in public life.**

#### Speech codes don’t erode democratic protections – they increase them – other countries prove.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “THE SPEECH WE HATE”: FIRST AMENDMENT TOTALISM, THE ACLU, AND THE PRINCIPLE OF DIALOGIC POLITICS.” *Arizona State Law Journal.* Winter 1995. RP

**If protecting hate speech and pornography were essential to safeguarding freedom of inquiry and a flourishing democratic politics, we would expect to find that nations that have adopted hate speech rules and curbs against pornography would suffer quickly a sharp erosion of the spirit of free inquiry. But this has not happened. A host of industrialized nations, including Sweden, Italy, Canada, and Great Britain, have instituted laws against hate speech and hate propaganda**, in many cases to comply with international treaties and conventions requiring such action. Many of these countries traditionally respect free speech at least as much as the United States does. **No such nation has reported any erosion of the atmosphere of free speech or debate. At the same time, the United States, which until recently has refused to put such rules into effect, has a less than perfect record of protecting even political speech. United States agencies have persecuted communists, hounded Hollywood writers out of the country, and harassed and badgered such civil rights leaders as Josephine Baker, Paul Robeson, and W. E. B. DuBois in a campaign of personal and professional smears** that ruined their reputations and destroyed their ability to earn a living. In recent times, conservatives inside and outside the Administration have disparaged progressives to the point where many are now afraid to describe themselves \*1291 as “liberals.” Controversial artists are denied federal funding. Museum exhibits that depict the atomic bombing of Hiroshima have been ordered modified. **If political speech lies at the center of the First Amendment, its protection seems to be largely independent of what is taking place at the periphery. There may, indeed, be an inverse correlation. Those institutions most concerned with social fairness have proved to be the ones most likely to promulgate anti-hate speech rules. Part of the reason seems to be the recognition that hate speech can easily silence and demoralize its victims, discouraging them from participating in the life of the institution. If so, enacting hate speech rules may be evidence of a commitment to democratic dialogue, rather than the opposite, as some of its opponents maintain.**

#### Free speech isn’t without harm – universal recognition of it leads to minority causalities and genocide

**Epps:** Epps, Garrett [Contributor, The Atlantic] “Free Speech Isn't Free.” *The Atlantic.* February 2014. RP

-Standpoint of white privilege to assume universally good

-Nazis relied on free speech

-Marketplace of ideas not perfect – sometimes allows bad speech

-Minorities are victims – they experience psychological damage

**Most journalistic defenses of free speech take the form of "shut up and speak freely."** The Beast itself provides Exhibit A: Cultural news editor Michael Moynihan announced that "we're one of the few countries in the Western world that takes freedom of speech seriously," and indignantly defended it against "those who pretend to be worried about trampling innocents in a crowded theater but are more interested in trampling your right to say whatever you damn well please." To Moynihan, Rosenbaum could not possibly be sincere or principled; he is just a would-be tyrant. The arguments about harm were "thin gruel"—not even worth answering. Moynihan's response isn't really an argument; it's a defense of privilege, like a Big Tobacco paean to the right to smoke in public. In contrast to this standard-issue tantrum is a genuinely thoughtful and appropriate response from Jonathan Rauch at The Volokh Conspiracy, now a part of the Washington Post's web empire. Rauch responds that painful though hate speech may be for individual members of minorities or other targeted groups, its toleration is to their great collective benefit, because in a climate of free intellectual exchange hateful and bigoted ideas are refuted and discredited, not merely suppressed .... That is how we gay folks achieved the stunning gains we've made in America: by arguing toward truth. I think he's right. But the argument isn't complete without conceding something most speech advocates don't like to admit: **Free speech does do harm. It does a lot of harm. And while it may produce social good much of the time, there's no guarantee—no "invisible hand" of the intellectual market—that ensures that on balance it does more good than harm.** As Rauch says, it has produced a good result in the case of the gay-rights movement. But sometimes it doesn't. **Europeans remember a time when free speech didn't produce a happy ending.** They don't live in a North Korea-style dystopia. They do "take free speech seriously," and in fact many of them think their system of free speech is freer than ours. **Their view of human rights was forged immediately after World War II, and one lesson they took from it was that democratic institutions can be destroyed from within by forces like the** Nazis who use mass communication to dehumanize whole races **and religions, preparing the population to accept exclusion and even extermination.** For that reason, some major human-rights instruments state that "incitement" to racial hatred, and "propaganda for war," not only may but must be forbidden. The same treaties strongly protect freedom of expression and opinion, but they set a boundary at what we call "hate speech." It's a mistake to think that the U.S. system goes back to the foundation of the republic. At the end of World War II, in fact, our law was about the same as Europe's is today. The Supreme Court in Beauharnais v. Illinois (1952) upheld a state "group libel" law that made it a crime to publish anything that "exposes the citizens of any race, color, creed or religion to contempt, derision, or obloquy." European countries outlawed fascist and neo-Nazi parties; in the 1951 case Dennis v. United States, the Supreme Court upheld a federal statute that in essence outlawed the Communist Party as a "conspiracy" to advocate overthrowing the U.S. government. Justice Robert H. Jackson, who had been the chief U.S. prosecutor of Nazi war criminals, concurred in Dennis, warning that totalitarianism had produced "the intervention between the state and the citizen of permanently organized, well financed, semi- secret and highly disciplined political organizations." A totalitarian party "denies to its own members at the same time the freedom to dissent, to debate, to deviate from the party line, and enforces its authoritarian rule by crude purges, if nothing more violent." Beauharnais, Dennis, and similar cases were criticized at the time, and today they seem grievously wrong. But many thoughtful people supported those results at the time. U.S. law only began to protect hateful speech in the 1960s. The reason: Repressive Southern states were trying to criminalize the civil-rights movement. U.S. law only began to protect hateful speech during the 1960s. The reason, in retrospect, is clear—repressive Southern state governments were trying to criminalize the civil-rights movement for its advocacy of change. White Southerners claimed (and many really believed) that the teachings of figures like Martin Luther King or Malcolm X were "hate speech" and would produce "race war." By the end of the decade, the Court had held that governments couldn't outlaw speech advocating law violation or even violent revolution. Neither Black Panthers nor the KKK nor Nazi groups could be marked off as beyond the pale purely on the basis of their message. Those decisions paved the way for triumphs by civil rights, feminist, and gay-rights groups. **But let's not pretend that nobody got hurt along the way. The price for our freedom—a price in genuine pain and intimidation—was paid by Holocaust survivors in Skokie and by civil-rights and women's-rights advocates subjected to vile abuse in public and private, and by gay men and lesbians who endured decades of deafening homophobic propaganda before the tide of public opinion turned. Free speech can't be reaffirmed by drowning out its critics**. It has to be defended as, in the words of Justice Oliver Wendell Holmes, "an experiment, as all life is an experiment." I admire people on both sides who admit that we can't be sure we've drawn the line properly. In Dennis, the case about Communists, Justice Felix Frankfurter voted to uphold the convictions. That vote is a disgrace; but it is slightly mitigated by this sentence in his concurrence: "Suppressing advocates of overthrow inevitably will also silence critics who do not advocate overthrow but fear that their criticism may be so construed .... It is a sobering fact that, in sustaining the convictions before us, we can hardly escape restriction on the interchange of ideas." When Holmes at last decided that subversive speech should be protected, he did so knowing full well that his rule, if adopted, might begin the death agony of democracy. "If in the long run the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community," he wrote in his dissent in Gitlow v. New York, "the only meaning of free speech is that they should be given their chance and have their way." The reason that we allow speech cannot be that it is harmless. It must be that we prefer that people harm each other, and society, through speech than through bullets and bombs. American society is huge, brawling, and deeply divided against itself. Social conflict and change are bruising, ugly things, and in democracies they are carried on with words. That doesn't mean there aren't casualties, and it doesn't mean the right side will always win. For that reason, questions about the current state of the law shouldn't be met with trolling and condescension. If free speech cannot defend itself in free debate, then it isn't really free speech at all; it's just a fancier version of the right to smoke.

#### Allowing hate speech sets an even more dangerous slippery slope – the state can justify allowing even more egregious behavior to minorities.

**Delgado and Stefancic:** Delgado, Richard. [Professor of Law, University of Colorado] Stefancic, Jean. [Research Associate, University of Colorado School of Law] “Hateful Speech, Loving Communities: Why Our Notion of “A Just Balance” Changes So Slowly.” *California Law Review,* Vol. 82, July 1994. MZ

**Concerns about slippery slopes and dangerous administrators also arise when the hate speech controversy is viewed through a free-speech lens: if we allow face-to-face racial invective to be bridled, will we not soon find ourselves tolerating restrictions on classroom speech[?] or political satire in the school newspaper?**3 If we permit our fragile web of speech protection to suffer one rent, might not others soon follow? Moreover, someone will have to adjudicate complaints brought under the new rules. Is there not a danger that the judge or administrator will turn into a narrow-minded cen- sor, imposing his or her notion of political orthodoxy on a campus climate that ought to be as free as possible?' **Hate speech rule advocates, however, will see the controversy in dif- ferent terms. For them, the relevant issue is whether campuses are free to impose reasonable rules to protect the dignity and self-regard of vulnerable young African American undergraduates and other targets of hate speech.**5 These advocates place equality at the center of the controversy and portray the defenders of racist invective as seeking to attack values emanating from the equality-protecting Constitutional amendments.6 Since these values are vital to our system ofjustice, rule advocates maintain that it is incumbent on free speech advocates to show that the hate-speaker's interest in hurling racial invective rises to the requisite level of compellingness. **They will insist that this interest be advanced in the way least damaging to equality, and they, too, will raise line-drawing and slippery slope concerns, but [come] from the opposite direction. If society does not intervene to protect equality from this intrusion, where will it all stop?7 Rule advocates will raise concerns about the administrator who will make decisions under the code, but again from the opposite direction: they will want to make sure that the hearing officer is sensitive to the delicate nuances of racial supremacy in the incidents likely to come before him or her.'**

#### The idea of legal precedent being set by defending hate speech turns a blind eye to oppression that exists now – the ACLU defending Nazis and racists just perpetuates unjust material conditions.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “THE SPEECH WE HATE”: FIRST AMENDMENT TOTALISM, THE ACLU, AND THE PRINCIPLE OF DIALOGIC POLITICS.” *Arizona State Law Journal.* Winter 1995. RP

As we have seen, the extreme case (or core-periphery) argument rests on an unexamined, paradoxical metaphor. It adopts a view of the Constitution and of dialogue that is at odds with the one we hold. It mistakenly treats subordinate principles as though they were people and ends in themselves. It treats the interests of minorities as though they were of little weight, or as fully protected by merely protecting speech. It ignores the experience of other industrialized nations that have instituted hate-speech reforms without injurious consequences. What accounts for its rhetorical attraction and staying power? We believe that the principal reason is that hate speech and pornography today do not lie at the periphery of the First Amendment, as the ACLU and other advocates urge, but at its center. In former times, society was much more structured. Citizens knew their places. Women and blacks understood that they were not the equals of white men-the Constitution formally excluded them - and coercive social and legal power reminded them if they were ever tempted to step out of line. It was unnecessary to reinforce this constantly-an occasional reminder would do. Today, however, the formal mechanisms that maintained status and caste are gone or repealed. All that is left is speech and the social construction of reality. **Hate speech has replaced formal slavery, Jim Crow laws, female subjugation, and Japanese internment as a means to keep outsider groups in line**. In former times, political speech was indeed the center of the First Amendment. Citizens (white, property-owning males, at any rate) took a lively interest in politics. They spoke, debated, wrote tracts, and corresponded with each other about how the Republic ought to be governed. They did not speak much about whether women were men's equals, should be allowed to hold jobs or vote, whether blacks were the equals of whites, because this was not necessary-the very ideas were practically unthinkable. Today, the situation is reversed. Few Americans vote, or can even name their representative in Washington. [FN99] Politics has deteriorated to a once-every-four-years ritual of attack ads, catch phrases, sound bites, and image manicuring. At the same time, however, politics in the sense of jockeying for social position has greatly increased in intensity and virulence. Males are anxious and fearful of advances by women; whites fear crime and vengeful behavior from blacks and other minorities; and so on. Hate speech today is a central weapon in the struggle by the empowered to \*1299 maintain their position in the face of formerly subjugated groups clamoring for change. It is a means of disparaging the opposition while depicting one's own resistance to sharing opportunities as principled and just. **Formerly, the First Amendment and free speech were used to make small adjustments within a relatively peaceful political order consisting of propertied white males. Now it is used to postpone macroadjustments and power-sharing between that group and others: It is, in short, an instrument of majoritarian identity politics.** Nothing in the Constitution (at least in the emerging realist view) requires that hate speech receive protection. But ruling elites are unlikely to relinquish it easily, since it is an effective means of postponing social change. In the sixties, it was possible to believe Harry Kalven's optimistic hypothesis that gains for blacks stemming from the gallant struggle for civil rights would end up benefiting all of society. It was true for a time, at least, that the hard-won gains by a decade of civil rights struggle did broaden speech, due process, and assembly rights for whites as well as blacks. Today, however, there has been a stunning reversal. Now, the reciprocal injury- inhibition of the right to injure others-has been elevated to a central place in First Amendment jurisprudence. The injury-being muzzled when one would otherwise wish to disparage, terrorize, or burn a cross on a black family's lawn-is now depicted as a prime constitutional value. The interest convergence between black interests and broadened rights for whites lasted but a short time. **Now, the ACLU defends Aryan supremacists, while maintaining that this is best for minorities, too.** Blanket resistance to hate-speech regulations, which many college and university administrators are trying to put into place in order to advance straightforward institutional interests of their own-preserving diversity, teaching civility, preventing the ***\****loss of black undergraduates to other schools generates a great deal of business for the ACLU and similar absolutist organizations. In a sense, the ACLU and conservative bigots are hand-in-glove. Like criminals and police, they understand each other's method of operation, mentality, and objectives. There is a tacit understanding of how each shall behave, and how each shall gain from the other. **Indeed, primarily because the Ku Klux Klan and similar clients are so *bad*, the ACLU gets to feel romantic and virtuous and the rest of us, who despise racism and bigotry, are seen as benighted fools because we do not understand how the First Amendment really works. But we do. The bigot is not a stand-in for Tom Paine. The best way to preserve lizards is not to preserve hawks. Reality is not paradoxical. Sometimes,** defending Nazis is simply defending Nazis.

#### Protecting hateful speech for the sake of legal precedent condones oppression.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “THE SPEECH WE HATE”: FIRST AMENDMENT TOTALISM, THE ACLU, AND THE PRINCIPLE OF DIALOGIC POLITICS.” *Arizona State Law Journal.* Winter 1995. RP

A second reason why we ought to distrust the core-periphery argument is that it rests on a paradoxical metaphor that its proponents rarely if ever explain or justify. Suppose, for example, that one were in the business of supplying electricity to a region. One has competitors-private utility companies, suppliers of gas heaters, and so on. Ninety-nine percent of one's business consists of supplying electricity to homes and businesses, but the business also supplies a small amount of electricity to teenagers to recharge the batteries of their Walkmans. It would surely be a strange business decision to focus all or much of one's advertising campaign on the much smaller account. Or, take a more legal example. Protecting human security is surely a core value for the police. Yet, it would be a peculiar distribution of police services if a police chief were to reason: human life is the core value which we aim to protect; therefore, we will devote the largest proportion of our resources toward apprehending shoplifters and loiterers. There are situations in which the core-periphery argument does make sense. Providing military defense of a territory may be one; ecology, where protecting lizards may be necessary in order to protect hawks, may be another. **But ordinarily, the suggestion that to protect a value or thing at its most extreme reaches is necessary in order to protect it at its core requires, at the very least, an explanation or some offer of a connection. Yet, defenders of hate speech who deploy this argument have not provided one. And, in the meantime, a weak argument does great harm. It treats in grand, exalted terms the harm of suppressing racist speech, drawing illegitimate support from the broad social justification-social dialogue among citizens. In contrast, the harm to hate speech's victims, out on the periphery, is treated atomistically**, as though it were an isolated event, a one-time-only affront to feelings. An injury characterized in act utilitarian terms obviously cannot trump an interest couched in rule **utilitarian ones. The Nazi, for example, derives a halo effect from other quite legitimate and valuable cases of speech, while the black is seen as a lone, quirky grievant with hypersensitive feelings**. But, in reality, hate speech is part of a concerted set of headwinds, including many other cases of hate speech, that a particular African-American victim will experience over the course of his or her life. If we are willing to defend speech in broad social terms, we should be able to consider systemic, concerted harms as well. The “speech we hate” argument draws plausibility only by ignoring this asymmetry: it draws on a social good to justify an evil deemed only individual, but which in fact is concerted and society-wide. The unfairness of collapsing the periphery and the center as absolutists do would be made clear if we rendered the argument: “We protect the speech they hate in order to protect that which we love.” But not only is the argument unfair in this sense, it ignores what makes hate speech peripheral as speech in the first place. Face to face hate speech-slurs, insults, put-downs, and epithets-are not referential. The recipient learns nothing new about himself or herself. Rather, the speech elements are more like performatives, relocating the speaker and victim in social reality. Hate speech is not about the real, but the hyperreal; a Willie Horton ad is like an ad about jeans that makes no factual claim but merely shows a woman and a car.

#### Legal modeling is non-unique and empirically denied – we limit fighting words.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “THE SPEECH WE HATE”: FIRST AMENDMENT TOTALISM, THE ACLU, AND THE PRINCIPLE OF DIALOGIC POLITICS.” *Arizona State Law Journal.* Winter 1995. RP

Every periphery is another principle's core; that is the nature of a multivalent constitutional system like ours. Principles limit other ones: X's right to privacy limits Y's right to freedom of action, and so on. **Indeed, the idea of a constitutional principle, like free speech, that has a core and a periphery would be incoherent without the existence of other values** (such as privacy or reputation) to generate the limit that accounts for the idea of a periphery. **Thus, commercial and defamatory speech, which have a lesser degree of constitutional protection than political speech, are subject to limits not because they are not speech at all, but because they implicate other values that we hold. And the same is true of speech that constitutes a threat, provokes a fight, defrauds customers, or divulges an official secret. All these and dozens of other “exceptions” to the First Amendment are peripheral, and subject to limits, precisely because they reflect other principles, such as security, reputation, peace, and privacy. To argue, then, that speech must be protected at the most extreme case even more assiduously than when its central values are at stake is either to misunderstand the nature of a constitutional continuum, or to argue that the Constitution in effect has only one value.**

#### If they win legal modeling matters, vote neg – we should model equality by not allowing hate speech.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “THE SPEECH WE HATE”: FIRST AMENDMENT TOTALISM, THE ACLU, AND THE PRINCIPLE OF DIALOGIC POLITICS.” *Arizona State Law Journal.* Winter 1995. RP

**Every totalist argument is indeterminate, because it can be countered easily by an opposite and equally powerful countervailing totalism. To continue with the hate speech example, imagine that someone (say, the NAACP Legal Defense and Education Fund) argued in the following fashion: (1) Equality is a constitutional value; (2) the only way effectively to promote equality is to assure that it is protected everywhere; (3) therefore, whenever equality collides with another value, such as free speech, equality must prevail**. “We must protect the equality we hate, as much as that which we hold dear.” Now we would have two values, the defenders of which are equally convinced that their own value should reign supreme. Each regards the other's periphery as unworthy of protection. To be sure, balancing may be troublesome because it can disguise the political value judgments a judge makes on his or her way to a decision. [FN78] But totalism is worse-it gives the possessor permission not even to enter the realm of politics at all. At least, balancing encourages the decisionmaker to be aware and take into account the various values and interests at stake in a controversy. With totalism, one has no need to compromise or consider the other side. One finds oneself outside the realm of politics, and instead, inside that of sheer power.

### A2 State Bad

#### Speech codes demonstrate that governments are committed to the well-being of minorities. Overreach has been empirically disproven.

**Tsesis:** (Alexander Tsesis – Visiting Professor, University of Pittsburgh Law School; Visiting Assistant Professor, Chicago-Kent College of Law; Affiliated Scholar with the University of Wisconsin-Law School at the Institute for Legal Studies, “Review: The Boundaries of Free Speech: Understanding Words that Wound”, “International Context”

Numerous democracies have recognized the potential harms of hate speech on children and on democratic society as a whole. [n110](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n110) In chapter 12, Delgado and Stefancic compare the United States' treatment of hate speech with the regulation of such speech in other Western societies, and they show the relatively greater acceptance of such regulation in international agreements. Germany, which is one of the countries they discuss, has several laws to prevent both the long- and short-term risks of destructive messages. Anyone attacking the human dignity of others by inciting hatred against a segment of the population, advocating the use of "violent or arbitrary measures against them," or exposing them to malicious slander is subject to imprisonment. [n111](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n111) **Germany, further, punishes Holocaust denial and prohibits Nazi and neo-Nazi groups from using the Internet to disseminate their ideology**. [n112](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n112) Germany counterbalances the government's interest in regulating hate speech for preserving democratic institutions with an interest in protecting the free speech rights of individuals. [n113](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n113) Despite its open polity, Germany outlaws political parties that threaten democratic order**.**[**n114**](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n114)**Israel, too, has a law barring political candidates from national  [\*159] office who incite others to racism.**[**n115**](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n115)**Similarly, Canada prohibits hate speech that subverts the democratic process.**[**n116**](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n116)**British law, likewise, punishes those who incite others to racial hatred.**[**n117**](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n117)**Great Britain recognizes that tolerance of speech that calls for the abuse of racial, ethnic, and religious groups can popularize racist attitudes and increase inter-group friction.**[**n118**](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n118) **Countries that have adopted hate speech legislation show a concern for the well-being of targeted groups.** They recognize that the decision over whether to regulate speech requires governments to balance individual with social interests. Many countries that restrict hate speech, as Delgado and Stefancic point out, "believe that human rights and freedoms contain a collective, as well as an individual, dimension and that a citizen's right to promote racist views must be weighed against the interests of society." [n119](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n119) In this regard, the Austrian Penal Code places a greater emphasis on the dignity rights of the targets than the rights of intimidating hate speakers. Section 283 of the Austrian Penal Code makes it an offence to incite hostilities against religious, racial, ethnic, or national groups and to violate "their human dignity" through slander. [n120](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n120) Countries like Austria that have anti-hate speech laws "wish to deter the violence and fighting they believe it encourages." [n121](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n121) Such is also the case in Hungary, where Parliament passed a law criminalizing the organizing or providing of finances for any event which may provoke violence against a national, ethnic, racial, religious, or other group, hatred or incitement against the Hungarian nation, or any national, ethnic, racial, or religious group. [n122](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n122) On the international level, the International Covenant on Civil and Political Rights similarly enjoins signatory states to [\*160]  curb "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence." [**n123**](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n123) **The experiences of western democracies who have enacted hate speech regulations indicate that a limited proscription does not erode the government's commitment to protecting free speech and inquiry.**[**n124**](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n124)**Countries like England have found that hate speech regulations serve declaratory purposes because they indicate governments' commitment to the well-being of minorities.**[**n125**](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n125)**United States free speech jurisprudence is anomalous. Democracies generally recognize that preserving human rights supersedes bigots' desire to spread vituperative messages. The history of racism in the United States, from Native American dislocation, to slavery, to Japanese internment, demonstrates that here in the U.S., as in other democracies, intolerance and persecution can exist alongside free speech.** Safeguards against the real harms of hate speech can prevent the erosion of civil rights.

#### Speech laws don’t increase the power of racist institutions, and empirically do promote democratic gains *– scholars like Gates are just wrong*

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “The Neoconservative Case Against Hate-Speech Regulation-Lively, D'Souza, Gates, Carter, and the Toughlove Crowd.” *Vanderbilt Law Review.* November 1994. RP

**Neoconservatives also argue against hate-speech regulation on the ground, similar to the deflection argument, that the effort is quixotic or disingenuous. White people will never accede to such rules.** Proponents of hate-speech regula- tion surely must know this, they reason, hence their objectives are probably symbolic, tactical, or at any rate something other than what they say. Lively, for example, writes that the U.S. Supreme Court has consistently rejected laws regu- lating speech, finding them vague and overbroad. n43 He also writes that the campaign lacks vision and a sense of "mar- ketability"-it simply cannot be sold to the American people. n44 **Gates asks how hate-speech activists can possibly be- lieve that campus regulations, even if enacted, will prove effective**. If campuses are the seething arenas of racism that activists believe, how will campus administrators and hearing officials provide nondiscriminatory hearings on charges brought under the codes? n45 Elsewhere he accuses the hate-speech activists of pressing their claims for merely "symbol- ic" reasons, n46 while ignoring that the free-speech side has a legitimate concern over symbolism, too. Carter is less neg- ative about the motivations of hatespeech reformers, but does question whether their campaign is not "unwinnable." n47 But is the effort to curb hate speech doomed, quixotic, or disingenuous? It might be seen in this way if indeed the gains to be reaped were potentially only slight. But, as we argued earlier, they are not: The stakes are large, indeed our entire panoply of civil rights laws and rules depends for its efficacy on controlling the background of harmful depiction against which the rules and practices operate. n48 In a society where minorities are thought and spoken of respectfully, few acts of out-and-out discrimination would take place. In one that harries and demeans them at every turn, even a de- termined judiciary will not be able to enforce equality and racial justice. n49 Moreover, success is more possible than the toughlove crowd would like to acknowledge. A **host of Western in- dustrialized democracies have instituted laws against hate speech and hate crime, often in the face of initial resistance. n50 Some, like Canada, Great Britain, and Sweden, have traditions of respect for free speech and inquiry rivaling ours**. n51 **Determined advocacy might well accomplish the same here. In recent years, many-perhaps several hundred-college campuses have seen fit to institute student conduct codes penalizing face-to-face insults of an ethnic or similar nature**, many in order to advance interests that the campus straightforwardly identified as necessary to its function, such as pro- tecting diversity or providing an environment conducive to education. n52 **Moreover, powerful actors like government agencies, the writers' lobby, industries, and so on have generally been quite successful at coining free speech "excep- tions" to suit their interest-libel, defamation, false advertising, copyright, plagiarism, words of threat, and words of mo- nopoly, just to name a few. n53 Each of these seems natural and justified, because time-honored, and perhaps each is. But the magnitude of the interest underlying these exceptions seems no less than that of a young black undergraduate sub- ject to hateful verbal abuse while walking late at night on campus.** n54 New regulation is of course subject to searching scrutiny in our laissez-faire age. But the history of free speech doctrine, especially the landscape of "exceptions," shows that need and policy have a way of being translated into law. n55 The same may well continue to happen with the hate- speech movement.

#### Speech codes don’t erode democratic protections – they increase them – other countries prove.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “THE SPEECH WE HATE”: FIRST AMENDMENT TOTALISM, THE ACLU, AND THE PRINCIPLE OF DIALOGIC POLITICS.” *Arizona State Law Journal.* Winter 1995. RP

**If protecting hate speech and pornography were essential to safeguarding freedom of inquiry and a flourishing democratic politics, we would expect to find that nations that have adopted hate speech rules and curbs against pornography would suffer quickly a sharp erosion of the spirit of free inquiry. But this has not happened. A host of industrialized nations, including Sweden, Italy, Canada, and Great Britain, have instituted laws against hate speech and hate propaganda**, in many cases to comply with international treaties and conventions requiring such action. Many of these countries traditionally respect free speech at least as much as the United States does. **No such nation has reported any erosion of the atmosphere of free speech or debate. At the same time, the United States, which until recently has refused to put such rules into effect, has a less than perfect record of protecting even political speech. United States agencies have persecuted communists, hounded Hollywood writers out of the country, and harassed and badgered such civil rights leaders as Josephine Baker, Paul Robeson, and W. E. B. DuBois in a campaign of personal and professional smears** that ruined their reputations and destroyed their ability to earn a living. In recent times, conservatives inside and outside the Administration have disparaged progressives to the point where many are now afraid to describe themselves \*1291 as “liberals.” Controversial artists are denied federal funding. Museum exhibits that depict the atomic bombing of Hiroshima have been ordered modified. **If political speech lies at the center of the First Amendment, its protection seems to be largely independent of what is taking place at the periphery. There may, indeed, be an inverse correlation. Those institutions most concerned with social fairness have proved to be the ones most likely to promulgate anti-hate speech rules. Part of the reason seems to be the recognition that hate speech can easily silence and demoralize its victims, discouraging them from participating in the life of the institution. If so, enacting hate speech rules may be evidence of a commitment to democratic dialogue, rather than the opposite, as some of its opponents maintain.**

### A2 Radical Stuff

#### Institution-protected free speech is a trap states use to entrench their own power.

**Crimethinc:** Crimethinc. [News Source] “This is Not a Dialogue.” *Crimethinc*, January 2017. RP

There appears to be a broad consensus in the US political spectrum in favor of the right to free speech. While opponents may quibble over the limits, such as what constitutes obscenity, pundits from left to right agree that free speech is essential to American democracy. Appeals to this tradition of unrestricted expression confer legitimacy on groups with views outside the mainstream, and both fascists and radicals capitalize on this. Lawyers often defend anarchist activity by referencing the First Amendmentʼs provision preventing legislation restricting the press or peaceable assembly. We can find allies who will support us in free speech cases who would never support us out of a shared vision of taking direct action to create a world free of hierarchy. The rhetoric of **free speech** and First Amendment rights give us a common language with which to broaden our range of support and make our resistance more comprehensible to potential allies, with whom we may build deeper connections over time. But at what cost? This discourse of rights **seems to imply that the state is necessary to protect us against itself, as if it is a sort of Jekyll and Hyde split personality that simultaneously attacks us with laws and police and prosecutors while defending us with laws and attorneys and judges. If we accept this metaphor, it should not be surprising to find that the more we attempt to strengthen the arm that defends us, the stronger the arm that attacks us will become. Once freedom is defined as an assortment of rights granted by the state, it is easy to lose sight of the** actual **freedom those rights are meant to protect and focus instead on the rights themselves—implicitly accepting the legitimacy of the state. Thus, when we build visibility and support by using the rhetoric of rights, we undercut the possibility that we will be able to stand up to the state itself. We also open the door for the state to impose othersʼ “rights” upon us.**

#### The state uses free speech rights to crack down on its critics.

**Crimethinc:** Crimethinc. [News Source] “This is Not a Dialogue.” *Crimethinc*, January 2017. RP

**In the US, many take it for granted that it is easier for the state to silence and isolate radicals in countries in which free speech is not legally protected. If this is true, who wouldnʼt want to strengthen legal protections on free speech? In fact, in nations in which free speech is not legally protected, radicals are not always more isolated—on the contrary, the average person is sometimes more sympathetic to those in conflict with the state, as it is more difficult for the state to legitimize itself as the defender of liberty. Laws do not tie the hands of the state nearly so much as public opposition can; given the choice between legal rights and popular support, we are much better off with the latter.** One dictionary defines civil liberty as “the state of being subject only to laws established for the good of the community.” This sounds ideal to those who believe that laws enforced by hierarchical power can serve the “good of the community”—but who defines “the community” and what is good for it, if not those in power? **In practice, the discourse of civil liberties enables the state to marginalize its foes: if there is a legitimate channel for every kind of expression, then those who refuse to play by the rules are clearly illegitimate.** Thus we may read this definition the other way around: under “civil liberty,” all laws are for the good of the community, and any who challenge them must be against it. **Focusing on the right to free speech, we see only two protagonists, the individual and the state.** Rather than letting ourselves be drawn into the debate about what the state should allow, anarchists should focus on a third protagonist—the general public. We win or lose our struggle according to how much sovereignty the populace at large is willing to take back from the state, how much intrusion it is willing to put up with. If we must speak of rights at all, rather than argue that we have the right to free speech let us simply assert that the state has no right to suppress us. **Better yet, letʼs develop another language entirely.**

#### The far-right claims free speech rights to justify oppressive views.

**Crimethinc:** Crimethinc. [News Source] “This is Not a Dialogue.” *Crimethinc*, January 2017. RP

Anarchists have defended freedom of speech for centuries now. This is important in principle: in an anarchist vision of society, neither the state nor any other entity should be able to determine what we can and cannot say. Itʼs also important in practice: as a revolutionary minority frequently targeted for repression, weʼve consistently had our speeches, newspapers, websites, and marches attacked. But we arenʼt the only ones who have taken up the banner of free speech. **More recently, the right wing in the US has begun to allege that a supposed failure to give conservative views an equal hearing alongside liberal views constitutes a suppression of their free speech. By accusing “liberal” universities and media of suppressing conservative views—a laughable assertion, given the massive structures of power and funding advancing those views—they use First Amendment discourse to promote reactionary agendas. Supposedly progressive campuses reveal their true colors as they mobilize institutional power to defend right-wing territory in the marketplace of ideas, going so far as to censor and intimidate opposition. Extreme right and fascist organizations have jumped onto the free speech bandwagon as well. Fascists rely on the state to protect them, claiming that racist, anti-immigrant, and anti-gay organizing constitutes a form of legally protected speech. Fascist groups that are prevented from publishing their material in most other industrialized democracies by laws restricting hate speech frequently publish it in the United States, where no such laws exist**, and distribute it worldwide from here. In practice, state protection of the right to free expression aids fascist organizing. **If defending free speech has come to mean sponsoring wealthy right-wing politicians and enabling fascist recruiting, itʼs time to scrutinize what is hidden behind this principle.** Despite the radical roots of organizations such as the American Civil Liberties Union that advocate for state protection of free expression, **this form of civil liberties empties the defense of free speech of any radical content, implying that only the** state **can properly guarantee our ability to express ourselves freely** and thus reinforcing the power of the state above the right to free speech itself.

#### Free speech isn’t guaranteed – the state can move to eliminate it when the speech becomes too radical.

**Crimethinc:** Crimethinc [News source and compiler] “This is Not a Dialogue.” *Crimethinc.* No date. RP

**But what if, despite the skewed playing field, someone manages to say something that threatens to destabilize the power structure?** If history is any indication, it swiftly turns out that freedom of expression is not such a sacrosanct right after all. **In practice, we are permitted free speech only insofar as expressing our views changes nothing. The premise that speech alone cannot be harmful implies that speech is precisely that which is ineffectual: therefore, anything effectual is not included among oneʼs rights. During World War I, the Espionage Act criminalized any attempt to “cause insubordination, disloyalty, mutiny, [or] refusal of duty**” or to obstruct recruiting for the armed forces. President Woodrow Wilson urged the billʼs passage because he believed antiwar activity could undermine the US war effort. Alexander Berkman and Emma Goldman were arrested under this law for printing anarchist literature that opposed the war. Likewise, the Anarchist Exclusion Act and the subsequent Immigration Act were used to deport or deny entry to any immigrant “who disbelieves in or who is opposed to all organized government.” Berkman, Goldman, and hundreds of other anarchists were deported under these acts. **There are countless other examples showing that when speech can threaten the foundation of state power, even the most democratic government doesnʼt hesitate to suppress it. Thus, when the state presents itself as the defender of free speech, we can be sure that this is because our rulers believe that allowing criticism will strengthen their position more than suppressing it could. Liberal philosopher and ACLU member Thomas Emerson saw that freedom of speech “can act as a kind of ‘safety valveʼ to let off steam when people might otherwise be bent on revolution.” Therein lies the true purpose of the right to free speech in the US.**

#### Free speech isn’t a dialogue – the state will ignore people and dangle it as a carrot that it can pull away

**Crimethinc:** Crimethinc [News source and compiler] “This is Not a Dialogue.” *Crimethinc.* No date. RP

**Maybe you missed this, but youʼre not in a dialogue. Your views are beside the point. Argue all you want—your adversaries are glad to see you waste your breath. Better yet if you protest: theyʼd rather you carry a sign than do anything. Theyʼll keep you talking as long as they can, just to tire you out —to buy time. They intend to force their agenda on you. Thatʼs what all the guns are for, what the police and drones and surveillance cameras are for, what the FBI and CIA and NSA are for, what all those laws and courts and executive orders are for.** Itʼs what their church is for, what those racist memes are for, what online harassment and bullying are for. Itʼs what gay bashings and church burnings are for. **This is not a dialogue. How could you be so naïve? A dialogue—from which some of the participants can be deported at any time? A dialogue—in which one side keeps shooting and incarcerating the other side? A dialogue—in which a few people own all the networks and radio stations and printing presses, while the rest have to make do with markers and cardboard signs**? A dialogue, really? Youʼre not in a dialogue. Youʼre in a power struggle. All that matters is how much force you can bring to bear on your adversaries to defend yourself from them. You can bet that if you succeed, they will accuse you of breaking off the dialogue, of violating their free speech. They will try to lure you back into conversation, playing for time until they need no more stratagems to keep you passive while they put the pieces in place for tyranny. **This isnʼt a dialogue—itʼs a war.** Theyʼre gambling that you wonʼt realize this until itʼs too late. If freedom is important to you, if you care about all the people marked for death and deportation, start taking action.

#### Free speech isn’t possible in a state marked by disparities – only the rich can ever have a shot at true freedom.

**Crimethinc:** Crimethinc [News source and compiler] “This is Not a Dialogue.” *Crimethinc.* No date. RP

**The discourse of free speech in democracy presumes that no significant imbalances of power exist, and that the primary mechanism of change is rational discussion. In fact, a capitalist elite controls most resources, and power crystallizes upward along multiple axes of oppression**. **Against this configuration, it takes a lot more than speech alone to open the possibility of social change. There can be no truly free speech except among equals—among parties who are not just equal before the law, but who have comparable access to resources and equal say in the world they share. Can an employee really be said to be as free to express herself as her boss, if the latter can take away her livelihood? Are two people equally free to express their views when one owns a news network and the other cannot even afford to photocopy fliers? In the US, where donations to political candidates legally constitute speech, the more money you have, the more “free speech” you can exercise.** As the slogan goes, freedom isnʼt free—and nowhere is that clearer than with speech. Contrary to the propaganda of democracy, ideas alone have no intrinsic force. Our capacity to act on our beliefs, not just to express them, determines how much power we have. In this sense, the “marketplace of ideas” metaphor is strikingly apt: you need capital to participate, and the more you have, the greater your ability to enact the ideas you buy into. **Just as the success of a few entrepreneurs and superstars is held up as proof that the free market rewards hard work and ingenuity, the myth of the marketplace of ideas suggests that the capitalist system persists because everyone—billionaire and bellboy alike—agrees it is the best idea.**

### A2 Codes Fail [Empirics]

#### Enforcement of speech codes doesn’t violate expression and successfully combats hate speech – Wisconsin codes prove.

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

-Also in HS disad file

The most serious concerns about adopting a rule restricting discriminatory harassment or hate speech were those involving legal questions as to whether any sort of restriction on expressive behavior could be accepted in a university setting. **The Wisconsin cases, however, provide little evidence to suggest that free expression has been deterred or suppressed as a result of enforcement of the university's antiharassment regulation. In the eighteen months in which it has been in force, a total of thirty-two complaints have been filed alleging violations of the Wisconsin rule.14 Of these, thirteen were dismissed because they were found not to violate the rule;35 two were dismissed following a hearing;** and in ten cases, discipline was imposed. 36 The disci- plinary sanctions imposed included one written apology, one warn- ing letter, seven disciplinary probations and one suspension.37 **All cases resulting in probation or suspension also involved conduct which violated some other provision of the student conduct code- an assault, a threat, or disorderly conduct, for example.38 In no case was discipline imposed in connection with a classroom dis- cussion or expression of opinion.3 9 In most of the cases leading to discipline, the rule violation involved the use of a discriminatory epithet rather than "other expressive behavior."**

#### Speech going underground is much better than it being out in the open – people openly saying racial slurs normalizes violence – psychological evidence proves.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “Pressure Valves and Blooded Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulations.” *California Law Review.* Volume 84. July 1994. RP

**The pressure valve argument holds that rules prohibiting hate speech are unwise because they increase the danger racism poses to minorities. Forcing racists to bottle up their dislike of minority group members means that they will be more likely to say or do something hurtful later.** Free speech thus functions as a pressure valve, allowing tension to dissipate before it reaches a dangerous level. 1 Pressure valve proponents argue that if minorities understood this, they would oppose antiracism rules. **The argument is paternalistic; it says we are denying you what you say you want, and we are doing it for your own good**. The rules, which you think will help you, will really make matters worse. If you knew this, you would join us in opposing them. Hate speech may make the speaker feel better, at least temporarily, but it does not make the victim safer. **Quite the contrary, the psychological evidence suggests that permitting one person to say or do hateful things to another increases, rather than decreases, the chance that he or she will do so again in the future**. 2 Moreover, others may believe it is permissible to follow suit. 3 **Human beings are not mechanical objects**. Our behavior is more complex than the laws of physics that describe pressure valves, tanks, and the behavior of a gas or liquid in a tube. **In particular, we use symbols to construct our social world, a world that contains categories and expecta- tions for "black," "woman," "child," "criminal," "wartime enemy," and so on.**5 4 Once the roles we create for these categories are in place, they govern the way we speak of and act toward members of those categories in the future.55 Even simple barnyard animals act on the basis of categories. Poultry farmers know that a chicken with a single speck of blood will be pecked to death by the others." With chickens, of course, the categories are neural and innate, functioning at a level more basic than language. **But social science experiments demonstrate that the way we categorize others affects our treatment of them**. An Iowa teacher's famous "blue eyes/brown eyes" experiment showed that even a one-day assignment of stigma can change behavior and school performance.57 **At Stanford University, Phillip Zimbardo assigned students to play the roles of prisoner and prison guard, but was forced to discontinue the experiment when some of the participants began taking their roles too seriously.** 8 And Diane Sculley's interviews with male sexual offenders showed that many did not see themselves as offenders at all. In fact, research suggests that exposure to sexually violent pornography increases men's antagonism toward women and intensifies rapists' belief that their victims really welcomed their attentions. At Yale University, Stanley Milgram showed that many members of a university community could be made to violate their conscience if an authority figure invited them to do so and assured them this was permissible and safe**." The evidence, then, suggests that allowing persons to stigmatize or revile others makes them more aggressive, not less so. Once the speaker forms the category of deserved-victim, his or her behavior may well con- tinue and escalate to bullying and physical violence. Further, the studies appear to demonstrate that stereotypical treatment tends to generalize- what we do teaches others that they may do likewise.** Pressure valves may be safer after letting off steam; human beings are not.

#### Empirics confirm that limits on hate speech do work – Europe and Canada prove deterrence and legal action are taken.

**Liptak:** Liptak, Adam [Contributor, The New York Times] “Hate speech or free speech? What much of West bans is protected in U.S.” *The New York Times.* June 2008. RP

VANCOUVER, British Columbia — **A couple of years ago, a Canadian magazine published an article arguing that the rise of Islam threatened Western values**. The article's tone was mocking and biting, but it said nothing that conservative magazines and blogs in the United States did not say every day without fear of legal reprisal. **Things are different here. The magazine is on trial. Under Canadian law, there is a serious argument that the article contained hate speech and that its publisher, Maclean's magazi**ne, the nation's leading newsweekly, should be forbidden from saying similar things, forced to publish a rebuttal and made to compensate Muslims for injuring their "dignity, feelings and self respect." The British Columbia Human Rights Tribunal, which held five days of hearings on those questions in Vancouver last week, will soon rule on whether Maclean's violated a provincial hate speech law by stirring up animosity toward Muslims. As spectators lined up for the afternoon session last week, an argument broke out. "It's hate speech!" yelled one man. "It's free speech!" yelled another. In the United States, that debate has been settled. Under the First Amendment, newspapers and magazines can say what they like about minority groups and religions - even false, provocative or hateful things - without legal consequence. The Maclean's article, "The Future Belongs to Islam," was an excerpt from a book by Mark Steyn called "America Alone." **The title was fitting: The United States, in its treatment of hate speech, as in so many areas of the law, takes a distinctive legal path. "In much of the developed world,** one uses racial epithets at one's legal peril**, one displays Nazi regalia and the other trappings of ethnic hatred at significant legal risk and one urges discrimination against religious minorities under threat of fine or imprisonment**," Frederick Schauer, a professor at the John F. Kennedy School of Government at Harvard, wrote in a recent essay called "The Exceptional First Amendment." "**But in the United States," Schauer continued, "all such speech remains constitutionally protected." Canada, Britain, France, Germany, the Netherlands, South Africa, Australia and India all have laws or have signed international conventions banning hate speech. Israel and France forbid the sale of Nazi items like swastikas and flags. It is a crime to deny the Holocaust in Canada, Germany and France. Last week, the actress Brigitte Bardot, an animal rights activist, was fined €15,000, or $23,000, in France for provoking racial hatred by criticizing a Muslim ceremony involving the slaughter of sheep. By contrast, U.S. courts would not stop the American Nazi Party from marching** in Skokie, Illinois, in 1977, though the march was deeply distressing to the many Holocaust survivors there. Si**x years later, a state court judge in New York dismissed a libel case brought** by several Puerto Rican groups against a business executive who had called food stamps "basically a Puerto Rican program." The First Amendment, Justice Eve Preminger wrote, does not allow even false statements about racial or ethnic groups to be suppressed or punished just because they may increase "the general level of prejudice." Some prominent legal scholars say the United States should reconsider its position on hate speech. "It is not clear to me that the Europeans are mistaken," Jeremy Waldron, a legal philosopher, wrote in The New York Review of Books last month, "when they say that a liberal democracy must take affirmative responsibility for protecting the atmosphere of mutual respect against certain forms of vicious attack." Waldron was reviewing "Freedom for the Thought That We Hate: A Biography of the First Amendment" by Anthony Lewis, the former New York Times columnist. Lewis has been critical of attempts to use the law to limit hate speech. **But even Lewis, a liberal, wrote in his book that he was inclined to relax some of the most stringent First Amendment protections "in an age when words have inspired acts of mass murder and terrorism.**" In particular, he called for a re-examination of the Supreme Court's insistence that there is only one justification for making incitement a criminal offense: the likelihood of imminent violence. The imminence requirement sets a high hurdle. Mere advocacy of violence, terrorism or the overthrow of the government is not enough; the words must be meant to, and be likely to, produce violence or lawlessness right away. A fiery speech urging an angry racist mob immediately to assault a black man in its midst probably qualifies as incitement under the First Amendment. A magazine article - or any publication - aimed at stirring up racial hatred surely does not. Lewis wrote that there is "genuinely dangerous" speech that does not meet the imminence requirement. "I think we should be able to punish speech that urges terrorist violence to an audience, some of whose members are ready to act on the urging," Lewis wrote. "That is imminence enough." Harvey Silverglate, a civil liberties lawyer in Boston, disagreed. "When times are tough," he said, "there seems to be a tendency to say there is too much freedom." "Free speech matters because it works," Silverglate continued. Scrutiny and debate are more effective ways of combating hate speech than censorship, he said, and all the more so in the post-Sept. 11 era. "The world didn't suffer because too many people read 'Mein Kampf,"' Silverglate said. "Sending Hitler on a speaking tour of the United States would have been quite a good idea." Silverglate seemed to be echoing the words of Justice Oliver Wendell Holmes, whose 1919 dissent in Abrams v. United States eventually formed the basis for modern First Amendment law. "The best test of truth is the power of the thought to get itself accepted in the competition of the market," Holmes wrote. "I think that we should be eternally vigilant," he added, "against attempts to check the expression of opinions that we loathe and believe to be fraught with death." The First Amendment is not, of course, absolute. The Supreme Court has said that the government may ban fighting words or threats. Punishments may be enhanced for violent crimes prompted by race hate. And private institutions, including universities and employers, are not subject to the First Amendment, which restricts only government activities. But merely saying hateful things about minority groups, even with the intent to cause their members distress and to generate contempt and loathing, is protected by the First Amendment. In 1969, for instance, the Supreme Court unanimously overturned the conviction of a leader of a Ku Klux Klan group under an Ohio statute that banned the advocacy of terrorism. The Klan leader, Clarence Brandenburg, had urged his followers at a rally to "send the Jews back to Israel," to "bury" blacks, though he did not call them that, and to consider "revengeance" against politicians and judges who were unsympathetic to whites. Only Klan members and journalists were present. Because Brandenburg's words fell short of calling for immediate violence in a setting where such violence was likely, the Supreme Court ruled that he could not be prosecuted for incitement. In his opening statement in the Canadian magazine case, a lawyer representing the Muslim plaintiffs aggrieved by the Maclean's article pleaded with a three-member panel of the tribunal to declare that the article subjected his clients to "hatred and ridicule" and to force the magazine to publish a response. "You are the only thing between racist, hateful, contemptuous Islamophobic and irresponsible journalism," the lawyer, Faisal Joseph, told the tribunal, "and law-abiding Canadian citizens." In response, a lawyer for Maclean's all but called the proceeding a sham. "Innocent intent is not a defense," the lawyer, Roger McConchie, said, in a bitter criticism of the British Columbia hate speech law. "Nor is truth. Nor is fair comment on true facts. Publication in the public interest and for the public benefit is not a defense. Opinion expressed in good faith is not a defense. Responsible journalism is not a defense." Jason Gratl, a lawyer for the British Columbia Civil Liberties Association, which has intervened in the case, was measured in his criticism of the law forbidding hate speech. "Canadians do not have a cast-iron stomach for offensive speech," Gratl said in a telephone interview. "We don't subscribe to a marketplace of ideas. Americans as a whole are more tough-minded and more prepared for verbal combat." **Many foreign courts have respectfully considered the U.S. approach - and then rejected it.** A 1990 decision from the Canadian Supreme Court, for instance, upheld the criminal conviction of James Keegstra for "unlawfully promoting hatred against an identifiable group by communicating anti-Semitic statements." Keegstra, a teacher, had told his students that Jews are "money loving," "power hungry" and "treacherous." Writing for the majority, Chief Justice Robert Dickson said there was an issue "crucial to the disposition of this appeal: the relationship between Canadian and American approaches to the constitutional protection of free expression, most notably in the realm of hate propaganda." Dickson said, "There is much to be learned from First Amendment jurisprudence." But he concluded that "the international commitment to eradicate hate propaganda and, most importantly, the special role given equality and multiculturalism in the Canadian Constitution necessitate a departure from the view, reasonably prevalent in America at present, that the suppression of hate propaganda is incompatible with the guarantee of free expression." The distinctive U.S. approach to free speech, legal scholars say, has many causes. It is partly rooted in an individualistic view of the world. Fear of allowing the government to decide what speech is acceptable plays a role. So does history. "**It would be really hard to criticize Israel, Austria, Germany and South Africa, given their histories," for laws banning hate speech**, said Schauer, the professor at Harvard, in an interview. In Canada, however, the laws seem to stem from a desire to promote societal harmony. Three time zones east of British Columbia, the Ontario Human Rights Commission - while declining to hear a separate case against Maclean's - nonetheless condemned the article. "In Canada, the right to freedom of expression is not absolute, nor should it be," the commission's statement said. "By portraying Muslims as all sharing the same negative characteristics, including being a threat to 'the West,' this explicit expression of Islamophobia further perpetuates and promotes prejudice toward Muslims and others." British Columbia human rights law, unlike that in Ontario, does appear to allow claims based on statements published in magazines. Steyn, the author of the Maclean's article, said the court proceeding illustrated some important distinctions. "The problem with so-called hate speech laws is that they're not about facts," he said in a telephone interview. "They're about feelings." "What we're learning here is really the bedrock difference between the United States and the countries that are in a broad sense its legal cousins," Steyn added. "Western governments are becoming increasingly comfortable with the regulation of opinion. The First Amendment really does distinguish the U.S., not just from Canada but from the rest of the Western world."

#### Speech codes are on balance effective and prevent hate speech – Wisconsin proves.

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

**In sum, the experiences at Wisconsin indicate that the adoption of narrow speech rules has proved to be a workable and generally effective policy. The enforcement of the rule has not stifled lively debate within the academic community, has not been used to repress minorities or other protected groups, and has proven useful in addressing harmful conduct which might otherwise have been ignored. It has served as an affirmation of the university's com- mitment to equal opportunity, and has stimulated debate and discussion concerning verbal discriminatory harassment and the nature of the constitutional right to free speech.** It has been an effective supplement to other disciplinary rules, and aids educa- tional efforts to teach students respect and tolerance. Furthermore, it has provided an additional means of redress for victims of abusive, discriminatory speech. **The rule is therefore, in most respects, a successful policy which has achieved its purposes, and has not led to the kinds of problems originally feared by opponents.**

#### Empirics confirm that speech codes increase awareness about the dangers of hate speech – this is uniquely valuable

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

The practical experiences with the Wisconsin rule discussed above suggest that some of the most serious concerns of the critics of regulation-those related to suppression of speech and misap- plication, for example-have not been realized. Questions remain, however, as to the effectiveness of hate speech rules for purposes of combating campus discrimination and discriminatory attitudes, or for assuring equality of educational opportunity. Some com- mentators have asserted that regulations are inadequate to address the underlying attitudes manifested in hate speech, and that the most effective antidote to discriminatory harassment is not rules, but some combination of education and more speech. These points are well-taken: educational efforts to address discrimination are certainly needed, and may be more effective than a regulatory approach; more speech may indeed be the best counter to discriminatory speech. **It does not follow, however, that a rule regulating discriminatory speech is an ineffective means to these ends. The Wisconsin experience illustrates the value of adopt- ing such a rule as part of more extensive educational and pro- grammatic efforts to deal with discrimination and harassment in the university environment. A rule prohibiting discriminatory speech is useful and effective as an additional response to institutional discrimination in several ways. First, the adoption of a rule, and the debate and discussion accompanying the process of adopting it, provide substantial ed- ucational benefits by focusing public attention on the problem of discriminatory harassment. Second, a rule can be an exercise of institutional speech**, a description of conduct that the university regards as harmful and inappropriate, and an expression of the institution's commitment to do something about it. The increased public awareness and the demonstration of university concern reflected by the adoption of a rule enhance other efforts to eliminate discrimination. Further, since most hate speech occurs under circumstances which do not allow for educational or speech responses**, a rule affords an additional opportunity to reach and educate individual students. At Wisconsin, none of the incidents leading to discipli- nary action under the hate speech rule occurred in classrooms or other forums for debate**; all took place in social or dormitory settings.5 9 In none of the cases did the use of abusive epithets lead to further opportunity for speech. In several, the result was an angry and potentially violent confrontation, while in others the victim was silent.60 As these situations illustrate, racial or discrim- inatory epithets, name-calling, and similar abusive speech do not afford opportunities for debate. More often, they cut it off, leaving the victim without an opportunity to respond.6' **The availability of the rule limiting speech provides a means of responding to a discriminatory problem, redress for the victims, and an occasion for educating the harassing individual.**

### A2 Cap

#### The notion of “free speech” existing absent control by the state positions speech as something that can be commodified

**Brown:** Brown, Wendy. [Professor of Political Science, University of California, Berkeley] “Undoing the Demos: Neoliberalism's Stealth Revolution.” *MIT Press*, 2015. RP

-Free speech = free market

-Ignores special circumstances and assumes best ideas win out

Importantly, however, **democracy is here conceived as a marketplace whose goods—ideas, opinions, and ultimately, votes—are generated by speech just as the economic market features goods generated by capital**.In other words, at the very moment that Justice Kennedy deems disproportionate wealth irrelevant to the equal rights exercised in this marketplace and the utilitarian maximization these rights generate, **speech itself acquires the status of capital, and a premium is placed on its unrestricted sources and unimpeded flow.¶ What is significant about rendering speech as capital? economization of the political occurs not through the mere application of market principles to nonmarket fields, but through the conversion of political processes, subjects, categories, and principles to economic ones.** This is the conversion that occurs on every page of the kennedy opinion. **If everything in the world is a market**, and neoliberal markets con- sist only of competing capitals large and small, and speech is the capital of the electoral market, **then speech will necessarily share capital’s attributes: it appreciates through calculated investment, and it advances the position of its bearer or owner.** Put the other way around, once speech is rendered as the capital of the electoral marketplace, **it is appropriately unrestricted and unregulated, fungible across actors and venues, and existing solely for the advancement or enhancement of its bearer’s interests.** The classic associations of political speech with freedom, conscience, deliberation, and persuasion are nowhere in sight.¶ How, precisely, is speech capital in the kennedy opinion? How does it come to be figured in economic terms where its regulation or restriction appears as bad for its particular marketplace and where its monopolization by corporations appears as that which is good for all?

#### Free speech deflects attention from the injustices of capitalism – battles are fought over free speech, distracting from a structural critique – empirically shown.

**Khan:** Khan, Tariq [Contributor and Researcher, The Hampton Institute] “Masking Oppression as Free Speech: An Anarchist Take.” November 2015. RP

**In the present-day United States, a shallow idea of "free speech" is often wielded by the privileged as a way to direct attention away from critiques of existing conditions and systems; particularly critiques of capitalism, imperialism, white supremacy, and patriarchy. For example, two years ago when UC Berkeley students organized to keep comedian Bill Maher from speaking on their campus, leading media outlets framed it as a controversy about free speech rather than engaging with the much deeper critiques the students had about Maher's perpetuation of US imperialist, Orientalist discourse which fuels militarism abroad and racist violence at home. Yet, while students who protest imperialist discourse are characterized as a threat to free speech,** the actual threat to free speech in academia goes unchallenged **by leading media outlets.** October 8, 2015, at the Community College of Philadelphia, English professor Divya Nair spoke at a rally organized by students in protest of police recruiters on campus. The students and Professor Nair drew connections between colonialism and modern US policing; particularly the police tactic of recruiting poor people of color to act as the capitalist state's foot-soldiers to control poor Black and Brown communities. Later that day, school authorities suspended Professor Nair without pay, and they have since suspended three student group members who are facing disciplinary hearings. In the past few years there has been a noticeable campus crackdown on anti-colonialist expression.

#### The Aff detracts from actually solving social problems by merely focusing on free speech – emprics confirm this has changed NOTHING

**Tillett-Saks:** Tillett-Saks, Andrew [Contributor, Counterpunch] “Neoliberal Myths.” *Counterpunch.* November 2013. RP

Every few years, protestors shout down a conservative speaker at an American University. Every few years, rancorous debate ensues. Every few years, the warring sides yell past one another; the opponents of the ‘shout-down’ uphold the sanctity of ‘free speech’ while the protestors decry the awful ‘real world impact’ of the conservative speaker’s message. In the wake of the Brown University shout-down of Ray Kelly, champion of the NYPD’s racist stop-and-frisk policy and racial profiling in general, the debate has resurfaced. Rather than talking past the anti-protestors’ arguments, they need to be addressed directly. **The prototypical argument in denouncing the protestors is not a defense of Ray Kelly’s racism. It is twofold: First, that a free-flowing discourse on the matter will allow all viewpoints to be weighed and justice to inevitably emerge victorious on its merits**. Second, that stopping a bigot from speaking in the name of freedom is self-defeating as it devolves our democratic society into tyranny. **The twofold argument against the protestors stems from two central myths of neoliberalism.** The argument for free discourse as the enlightened path to justice ignores that direct action protest is CounterPunch Magazine Tweet Share 0 Email Subscribe! 36 Pages, 6 Times a Year Search primarily responsible for most of the achievements we would consider ‘progress’ historically (think civil rights, workers’ rights, suffrage, etc.), not the free exchange of ideas. **The claim that silencing speech in the name of freedom is self-defeating indulges in the myth of the pre-existence of a free society in which freedom of speech must be preciously safeguarded, while ignoring the woeful shortcomings of freedom of speech in our society which must be addressed before there is anything worth protecting**. Critics of the protest repeatedly denounced direct action in favor of ideological debate as the path to social justice. “It would have been more effective to take part in a discussion rather than flat out refuse to have him speak,” declared one horrified student to the Brown Daily Herald. Similarly, Brown University President Christina Paxson labeled the protest a detrimental “affront to democratic civil society,” and instead advocated “intellectual rigor, careful analysis, and...respectful dialogue and discussion.” Yet the implication that masterful debate is the engine of social progress could not be more historically unfounded**. Only in the fairy tale histories of those interested in** discouraging social resistance **does ‘respectful dialogue’ play a decisive role in struggles against injustice. The eight-hour workday is not a product of an incisive question-and-answer session with American robber barons. Rather, hundreds of thousands of workers conducted general strikes during the nineteenth century, marched in the face of military gunfire at Haymarket Square in 1886, and occupied scores of factories in the 1930’s before the eight-hour work day became American law. Jim Crow was not defeated with the moral suasion of Martin Luther King, Jr.’s speeches. Rather, hundreds of thousands marched on Washington, suffered through imprisonment by racist Southern law enforcement, and repeatedly staged disruptive protests to win basic civil rights**. On a more international scale, Colonialism, that December 20, 2016 DAVE LINDORFF It Wasn’t the Russians: Hillary Lost Because She Blew Off Sanders and His Voters JOHN W. WHITEHEAD The Radical Jesus: How Would the Baby in a Manger Fare in the American Police State? CHRIS FLOYD An al Qaeda Christmas: the Touching Tale of How Hate Figures Became American Heroes ROBERT FISK Amnesia at the UN: the Massacres Samantha Power Conveniently Forgot to Mention JAN OBERG Syria’s Destruction: When Everybody Thinks Power and No One Thinks Peace ADAM BARTLEY Lessons in Witch- Hunting: a Warning somehow-oft-forgotten tyranny that plagued most of the globe for centuries, did not cease thanks to open academic dialogue. Bloody resistance, from Algeria to Vietnam to Panama to Cuba to Egypt to the Philippines to Cameroon and to many other countries, was the necessary tool that unlocked colonial shackles. Different specific tactics have worked in different contexts, but one aspect remains constant: **The free flow of ideas and dialogue, by itself, has rarely been enough to generate social progress.** It is not that ideas entirely lack social power, but they have never been sufficient in winning concessions from those in power to the oppressed. **Herein lies neoliberal myth number one—that a liberal free-market society will inexorably and inherently march towards greater freedom. To the contrary, direct action has always proved necessary**. Yet there are many critics of the protestors who do not claim Ray Kelly’s policies can be defeated with sharp debate. Instead, they argue that any protest in the name of freedom which blocks the speech of another is self-defeating, causing more damage to a free society by ‘silencing’ another than any potential positive effect of the protest. The protestors, the argument goes, tack society back to totalitarian days of censorship rather than forward to greater freedom. The protestors, however well intentioned, have pedantically thwarted our cherished liberal democracy by imposing their will on others.

#### Free speech for whom? Only the rich have the platform to use speech – the Aff just spreads neoliberal lies.

**Tillett-Saks:** Tillett-Saks, Andrew [Contributor, Counterpunch] “Neoliberal Myths.” *Counterpunch.* November 2013. RP

**The premise of this argument is neoliberal myth number two— that we live in a society with ‘freedom of speech’ so great it must be protected at all costs**. This premise stems from an extremely limited conception of ‘freedom of speech’. **Free speech should not be considered the mere ability to speak freely and inconsequentially in a vacuum, but rather the ability to have one’s voice heard equally. Due to the nature of private media and for the State Department and campaign finance in American society, this ability is woefully lopsided as political and economic barriers abound. Those with money easily have their voices heard through media and politics, those without have no such freedom. There is a certain irony (and garish privilege) of upper-class Ivy Leaguers proclaiming the sanctity of a freedom of speech so contingent upon wealth and political power**. There is an even greater irony that the fight for true freedom of speech, if history is any indicator, must entail more direct action against defenders of the status quo such as Ray Kelly. **To denounce such action out of indulgence in the neoliberal myth of a sacrosanct, already existing,** freedom of speech is to condemn the millions in this country with no meaningful voice to eternal silence.

#### The Aff’s reification of the public/private distinction in education is capitalistic

Cutler: Cutler, A. Claire. [Ph.D., Professor of Political Science, University of Victoria] “Artifice, Ideology, and Paradox: The Public/Private Distinction in International Law.” *Review of International Political Economy*, Vol. 4, No. 2, Summer 1997. CH

**The public/private distinction is not a natural, organic or inevitable attribute of the landscape of international law. It is an analytical construct that evolved in response to the growing individuation and territoriality of state power and authority. The distinction played a critical role in reconciling the notions of state sovereignty and autonomy with the idea of commitment to a broader community outside the state. It assisted in state building and provided the political conditions for the rise of modem capitalism.** The distinction also facilitated the growth of international commercial transactions by providing a mechanism for enforcing the laws of other states. **But the grounding of this mechanism in the private sphere creates the potential for undermining commitments to a broader community** because it obscures the political dimension of private international trade. Today, the distinction is marked by incoherence. At the very least, as an empirical distinction, it is in collapse. However, it is more likely that the distinction is in the final stage of decline as the activities and roles of private and public agents come together and create a disjuncture between its conceptual and empirical status. As John Dewey noted: Failure to recognize that general legal rules and principles are working hypotheses, needing to be constantly tested by the way in which they work out in application to concrete situations, explains the otherwise paradoxical fact that the slogans of the liberalism of one period often become the bulwarks of reaction in a subsequent era. (1924: 26) Today, the distinction obscures more than it clarifies about the nature of power and authority in international relations. It does not capture the rich and variable sources of authority in international relations. **Moreover, it places obstacles to revisioning the nature of the relationship between the public and the private spheres - between governments and their peoples. This is because it** conceals **the processes by which globalizing and privatizing influences are driving a wedge between states and societies and, paradoxically, rendering public processes private and thus beyond democratic practices of scrutiny and review**. The distinction functions practically and ideologically to deny the political foundations of private international trade relations. **This obscures the efforts of corporate and government elites to restore the primacy of merchant custom as the source of norms and private arbitration as the pre-eminent method for resolving disputes. These moves are reasserting the neoliberal commitment to private regulation**. Paradoxically, governments are participating in freeing international commercial transactions from national regulation and are thus contributing to their own inability to assert jurisdiction over international commercial matters involving domestic public policy concerns.20 Most importantly, the denial of 'the role of politics - the processes by which communities organize and institutionalize their self-directive capacities - in constituting the forms and structures of social life is a way of impeding access to an understanding of the role of human agency in constructing the world' (Klare, 1982: 1417). **The distinction exercises a form of** closure to debate of alternative arrangements **between different spheres or aspects of existence and suggests that this is the way things have always been. As such, it** operates in a profoundly conservative manner. To the extent that this erodes the foundations of democratic accountability, it would appear that theorists of international relations and democratic theory might, indeed, want to work together.21

#### True freedom of speech is a capitalistic myth

**Morley:** Morley, Daniel [Contributor, In Defense of Marxism] “Our Cherished Freedom of Speech Myth.” *In Defense of Marxism.* February 2015. RP

**In our society, there is no true freedom of speech, for it is a freedom only for those who command massive resources**. Freedom in the lives of the majority is fleeting, illusory and a cruel irony - the freedom to consume what media the capitalists have deemed important or profitable, and the freedom to be exploited, whether as industrial workers, journalists or struggling musicians. **A lucky few break through the tiny cracks in the system and these are held up as ‘proof’ of the freedom of the majority. It follows that the only way to create a truly free society, one in which the majority have equal access to the facilities of the media and in which culture is produced for the sake of genuine human expression, whatever form that may take, is to treat all these facilities - newspapers, TV stations, websites, music venues and the education system - as social goods freely available to all and under the democratic control of the masses**. But not only that. The enormous power of the ruling class stems primarily not from its ownership of the airwaves, but its control over production in general. **The long working hours, the general condition of relying on the capitalists for employment so that we may live, and all the social insecurity this creates, inhibits our creativity and confidence, it impoverishes us literally and spiritually. In these conditions, there can be no talk of real freedom of expression. The expropriation of the media empires under democratic workers control as part of a general plan of production to meet social need - that is the demand of those who fight for real freedom of expression!**

### A2 Deont

#### There are tons of exceptions to the First Amendment in the status quo – that non-uniques Aff offense and justifies banning hateful expressions.

**Delgado and Stefancic:** Richard Delgado and Jean Stefancic [Delgado is Charles Inglis Thomson Professor of Law, University of Colorado. J.D., U. Cali- fornia-Berkeley, 1974. Stefancic is theTechnical Services Librarian, University of San Francisco School of Law. M.L.S., Simmons College, 1963; M.A., University of San Francisco, 1989. “FOUR OBSERVATIONS ABOUT HATE SPEECH.” *Wake Forest Law Review.* Volume 44. 2009. RP

**Not all speech is free. The current legal landscape contains many exceptions and special doctrines corresponding to speech that society has decided it may legitimately punish. Some of these are: words of conspiracy; libel and defamation; copyright violation; words of threat; misleading advertising; disrespectful words uttered to a judge, police officer, or other authority figure; obscenity; and words that create a risk of imminent violence. If speech is not a seamless web, the issue is whether the case for prohibiting hate speech is as compelling as that underlying existing exceptions.** First Amendment defenders often assert that coining a new exception raises the specter of additional ones, culminating, potentially, in official censorship and Big Brother. But our tolerance for a wide array of special doctrines suggests that this fear may be exaggerated and that a case-by-case approach may be quite feasible. **How important is it to protect a black undergraduate walking home late at night from the campus library? As important as a truthful label on a can of dog food or safeguarding the dignity of a minor state official?** Neither free-speech advocates nor courts have addressed matters like these, but a rational approach to the issue of hate-speech regulation suggests that they should.

#### Even if free speech is generally good, it shouldn’t be absolute – it trades off with other, more important rights

**Goldberg:** Goldberg, Erica [Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 2016).] “FREE SPEECH CONSEQUENTIALISM.” *Columbia Law Review.* Volume 116. 2016. RP

**Even scholars who favor what they deem nonconsequentialist theories of free speech, and who believe, for example, that free speech has inherent value and is a right of autonomous moral agents, will in some circum stances balance these values against the harms speech causes. This balancing would occur for so-called nonconsequentialists either in defining what constitutes speech, in determining which cate gories of speech are protected, or in evaluating whether speech that is protected can nonetheless be prohibited because its harms greatly outweigh its virtues. 17 Some scholars would argue that free speech rights are balanced not against harms but against other rights, such as the right to privacy, property, or reputation.** However, unless one of the rights at issue is defined absolutely, resolving this conflict would also require considera tion of the harms at issue and the value of the speech. Thus, the question becomes not whether free speech consequentialism is appropriate, but how harms caused by speech should be accounted for in First Amendment jurisprudence.

#### Seditious speech undermines the omnilateral will and is *public crime*—obviously disproves your aff.

Varden 10, Helga, “A Kantian Conception of Free Speech,” in Freedom of Expression in a Diverse World, edited by Deirdre Golash. New York: Springer, 2010. BE

To understand Kant’s condemnation of seditious speech, remember that Kant, as mentioned above, takes himself to have shown that justice is impossible in the state of nature or that there is no natural executive right. Since Kant considers himself to have successfully refuted any defense of the natural executive right, he takes himself also to have shown that no one has the right to stay in the state of nature. This, in turn, explains why Kant can and does consider seditious speech a public crime. The intention behind seditious speech is not merely to criticize the govern- ment or to discuss theories of government critically, say. In order to qualify as seditious, the speaker’s intention must be to encourage and support efforts to subvert the government or to instigate its violent overthrow, namely revolution. To have such a right would be to have the right to destroy the state. Since the state is the means through which right is possible, such a right would involve having the right to annihilate right (6: 320). That is, since right is impossible in the state of nature, to have a right to subversion would be to have the right to replace right with might. Since the state is the only means through which right can replace might, the state outlaws it. And since it is a crime that “endanger[s] the commonwealth” rather than citizens qua private citizens, it is a public crime (6: 331). The refutation of a natural executive right also explains why Kant holds that public right covers speech amounting to a private crime, such as a serious contrac- tual lie. An act of aggression, or coercion, against another person is also an attempt to undermine the state’s rightful monopoly on coercion. Hence all violent aggres- sions, including serious contractual lies, are crimes covered by public law – what we call ‘private crime laws’. They are not regulated by private law (6: 331).

#### A productive school environment outweighs free speech—schools have commitments like a focus on a safe school environment that supersede free speech

CPE 6 (Center for Public Education, “Free speech and public schools,” April 5, 2006, <http://www.centerforpubliceducation.org/Main-Menu/Public-education/The-law-and-its-influence-on-public-school-districts-An-overview/Free-speech-and-public-schools.html/>

Students and teachers are free to speak their minds on public school grounds. They can even wear T-shirts with messages, dye their hair funky colors, and wear jewelry or buttons that make a social statement. But, even with First Amendment protection guaranteed by the U.S. Constitution, there are limits in the school setting. And figuring out where the line is drawn is fairly complicated. The reason is that the First Amendment’s Free Speech Clause requires courts and school districts to weigh and balance two forceful ideas that occasionally clash: The need for a safe, orderly school environment conducive to learning. The guaranteed American entitlement to speak or engage in expressive activity. Neither interest is trivial. Words and symbols are at the core of American society, and free speech, many believe, separates the United States from oppressive countries. Public schools are society in miniature, with students and school employees representing the full range of beliefs. It is important to remember that speech, as defined by the Constitution, is not just words. It also includes non-verbal and symbolic expression: clothes, off-campus web sites, dance performances, and art. In today’s climate, questions about freedom of speech are amplified. The nation is polarized by matters of war and peace, and in-your-face moral issues provoke car discussions that make parents cringe. Part of the mission of public schools is to teach children what democracy is all about. Tax-supported schools are also, by their actions, examples of democracy in action. It would be the height of contradiction to teach about the First Amendment and then not follow it. Yet, free speech cannot trump the main mission. As one federal court put it, “Learning is more important in the classroom than free speech.” Free speech as a public school guidepost While the U.S. Constitution applies within schools, rights are slightly reduced for the following reasons: Students are minors. Adults serve as employees. A public learning institution requires a peaceful environment to thrive. Public schools are in a category all their own. They must achieve academic excellence while obeying various laws, rules, and regulations. Private and parochial schools, however, are not similarly restricted by ideas of individual rights, free speech, and other liberties. Further, non-public learning places can trample on freedoms with impunity and never face a date in court. The big idea behind free speech is simply this: Students and teachers are free to reveal their views unless there is a compelling reason to stop it. School officials cannot arbitrarily pick and choose the speech it will allow. The following examples illustrate this conflict. OK: Allowing a student to wear a T-shirt that says “I oppose the war on terrorism.” Political statements are permitted in a school environment. WRONG: Making the student change or cover the shirt because it contains a political message, or because school officials, a majority of students, or the community agree with deployment of troops. The First Amendment is not subject to a popularity contest, and in fact is meant to protect less popular views. \* \* \* OK: Exercising editorial control and screening articles for a school-sponsored newspaper. Because such publications bear the implied message of school backing, officials have a right to filter the content. WRONG: Punishing a student for distributing publications when they are complying with policy and not endangering the safety of other students or employees. If school officials establish the time, place, and manner in which student publications can be distributed they must stick with it. Unless the brochure or pamphlet crosses the line of being inappropriate, public school employees cannot squelch the message simply because they disagree. The Constitution protects unpopular views. If a student is peacefully giving out flyers and following the school rule, then there should be no consequences. \* \* \* OK: Reprimanding a teacher for cursing out a colleague or a student. Aggressive, vulgar speech meant to provoke rarely wins First Amendment protection. WRONG: Transferring a principal who says the K-12 curriculum of the school district is not rigorous. Criticisms that are in the public interest are usually sheltered. Student speech Tinker v. Des Moines Independent Community School District is the single most influential U.S. Supreme Court case on school free speech. The memorable line emanating from the case: “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” The 1969 case involved Iowa students and their right to wear a black armband in school to symbolically protest against the Vietnam War. The principle outlined in the case that still endures: To prevail, school officials must demonstrate that the speech would provoke “substantial disruption” of school activities or invade the rights of others. Using that measuring stick, the court concluded that wearing armbands is a form of symbolic speech “akin to pure speech” and that the act was a “non-disruptive, passive expression of a political viewpoint.” The court said that a fundamental right of freedom of expression cannot be squelched due to “a mere desire to avoid [the] discomfort and unpleasantness that always accompanies an unpopular viewpoint.” In 1986, the Supreme Court decided Bethel School District No. 403 v. Fraser, affirming the school district’s right to punish a student who gave a lewd, vulgar political speech at a school assembly. The court reasoned that “it is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse.” The court was also concerned about the academic aspect of the case. “The freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against society’s countervailing interest in teaching students the boundaries of socially appropriate behavior,” the court wrote. Two years later, the Court decided Hazelwood School District v. Kuhlmeier, a watershed case that lets school districts remove articles from student newspapers and otherwise control activities that are curriculum-related. Courts need a way of determining whether certain speech is permitted on school grounds and protected under the Constitution or whether schools can place limits. One technique for figuring that out is the “forum analysis,” which enables school officials to control the time, place, and manner of speech. The three types of forums are: Open Forum: A public place, like a park, that is traditionally used as a place of free public discourse. Limited forum: Generally a public area, like the common area in a school. It is not open to anyone, but has been made available in limited ways and at limited times for certain speech. Closed forum: A private space, not used for an exchange of ideas. In fact, the place’s purpose would be lost if free speech were allowed, such as class time, school plays, or curricular-related activities. Web-savvy Students generally have broad freedom under the First Amendment to express themselves on the Internet on their own time, using off-campus computers. The results of that freedom include Out-of-Bounds web sites or blogs (both containing personal diaries or posted conversations) that can be course and offensive at best and harbor threats to people and property at worst. The U.S. Supreme Court has said the Internet is a protected free speech zone, calling it “the most participatory form of mass speech yet developed.” But there is a wide berth between speech that is offensive, obnoxious, and insulting—all of which is protected—and speech that places the safety of others in jeopardy. One Pennsylvania student’s web site requested $20 for a hit man. The reaction of that state’s Supreme Court was this: “We believe that the web site, taken as a whole, was a sophomoric, crude, highly offensive, and perhaps misguided attempt to humor or parody. However, it did not reflect a serious expression of intent to inflict harm.” Another case arose when a Missouri student was suspended for 10 days for a home-based web site that used vulgar language to criticize the principal, teachers, and other things about school. A federal district court in that state ruled that “the public interest is not only served by allowing [the student’s] message to be free from censure, but also by giving the students at [the high school] this opportunity to see the protections of the U.S. Constitution and the Bill of Rights at work.” Employee speech Over the years the courts have ruled that school employees are not always free to express their opinions and beliefs. Employees cannot be disciplined or suffer negative consequences for speaking out on matters of “public concern.” Schools can take action, however, when employees go public with strictly personal concerns. The main U.S. Supreme Court case is Pickering v. Board of Education, which held that freedom of speech—while not absolute—gives employees Constitutional protection if they are speaking about issues of a public nature, rather than those things about which they have a personal stake. Pickering overturned a school district’s decision to fire a teacher for commenting on school expenditures through letters in a local newspaper. For example, if a teacher criticized a building’s weak leadership and lax coordination between grades, it would likely be considered a comment about matters of public interest. If that same teacher complained publicly that she thought she was being unfairly targeted for classroom observations and undesirable assignments, a school district would likely be within their rights to react. But even standing on principles of public concern is not sacrosanct. Employees can still be disciplined based on that expression (like publicly criticizing supervisors) if the district believes that it will impede the employee’s ability to perform assigned duties, or the speech will undermine supervisory authority, disrupt the school, or destroy close working relationships. So when confronted with an employee speech case, the court’s analysis goes like this: Is the speech a matter of public concern? If not, the case ends and the employee loses. If so, then was the employee’s speech outweighed by the state’s interest in promoting efficiency in the delivery of educational services? The following rulings illustrate the kinds of cases decided by federal courts on this issue. A teacher cannot be dismissed for wearing a black armband to class to protest the Vietnam War. A teacher can refuse to participate in the flag salute under the First Amendment if she stands silently with her hands by her side. Teachers are in a particularly special position as classroom leaders. The courts have found that teachers are role models, and when operating in their official capacity become “state actors”—essentially an extension of government power. For instance, even though teachers may have a free speech right to join students at a student-arranged “Meet me at the Pole” prayer gathering before school, doing so could be seen as official endorsement of religion. Furthermore, unlike a college setting, K-12 public school instructors do not have a right of academic freedom. Control of the curriculum—both what is taught and how it is taught—is vested with the board of education and the administration. The Court wrote in the Pickering case that “The state has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general.” The future One of the interesting, if difficult, realities of First Amendment Free Speech law is that it is a moving target. As new cases arise the Supreme Court has an opportunity to adjust the line or mark it in a bolder color. Given the variety of people who populate them and the young impressionable students that so many people want to reach, schools are a natural venue for these kinds of conflicts to play out. The key is striking a balance so that education occurs while students and employees exercise their constitutionally protected speech right.

#### Defamation deprives people of their rightful honor—it’s coercive.

Varden 10, Helga, “A Kantian Conception of Free Speech,” in Freedom of Expression in a Diverse World, edited by Deirdre Golash. New York: Springer, 2010. BE

What about defamation, how does it involve coercion? Attempts at defamation also constitute attempts non-consensually to deprive others of what is theirs, namely their good reputations as determined by their actions. Corresponding to a person’s innate right to freedom, Kant argues, is that person’s duty to “Be an honour- able human being... Rightful honour... consists in asserting one’s worth as a human being in relation to others” (6: 236). To defend one’s rightful honor is to defend one’s right to be recognized by others solely by the deeds one has performed. Indeed, one’s reputation, Kant explains, “is an innate external belonging” (6: 295); it can originally belong only to the person whose deeds are in question. If others spread falsehoods about the life she has lived, then she has the right and duty to challenge their lies publicly, for her reputation belongs only to her and to no one else. A person’s reputation is not a means subject to other people’s choice; it is not a means others have a right to manipulate in order to pursue their own ends. To permit this, Kant argues, would be to permit others to use your person as their own means, or to “make yourself a mere means for others” rather than also being “at the same time an end for them” (6: 236). Let me say briefly how this account of rightful honor analyzes cases like Holocaust-denial. Part of what makes denying the Holocaust different from other types of defamation is that it involves people who are no longer alive. On the Kantian approach I am advancing, one’s reputation is seen as intimately connected with how one has interacted normatively with others (6: 291). To interact normatively is to be capable of normativity or capable of interacting qua ‘nou- mena’, as Kant says, and not merely ‘qua phenomena’ or as embodied beings gov- erned by laws of nature. It is qua noumena that we are capable of deeds or of having actions imputed to us. And it is qua noumena that we can still be defamed long after we are dead.3 Because right tracks normative relations, that one is no longer alive is beside the point. What is more, anyone – “relatives or strangers” – can challenge the lies told by another on behalf of the dead. Indeed, the one challenging the defa- mation does so in virtue of her own duty to ensure the conditions under which we can have rightful honor (6: 295). The reason is that those who spread such lies do not only express an unwillingness to respect those they defame in particular, but also they display a general unwillingness to interact in a way compatible with the rightful honor of everyone. The absence of defamation is necessary for public opinion to be reconcilable with each person’s right to freedom and the corresponding duty to be an honorable being. By defaming the dead, a person aims to falsify the public opinion, upon which everyone is dependent for rightful honor. Consequently, every member of the public has a right to challenge such lies on behalf of the dead.4

#### By targeting people based on factors like race or gender, hate speech disrespects their standing as agents – it intends to dehumanize victims, justifying restriction.

**Varden:** Varden, Helga. [Associate Professor of Philosophy and of Gender and Women's Studies, University of Illinois] “A Kantian Conception of Free Speech.” Published in *Freedom of Expression in a Diverse World*, edited by Deirdre Golash. New York: Springer, 2010. BE

Even if we accept that issues of systemic dependency explain why the state will regulate public spaces as well as some apparently private interactions, such as in the workplace, it is not immediately clear why the regulation of **hate speech and** speech amounting to **harassment** is necessary.14 Why are these kinds of speech not protected by free speech legislation – and why do they fall under public rather than private law? The answer lies in the way in which these kinds of speech **track severe and pervasive historical oppression**. **Hate** **speech** and harassment **are exemplified by personal insults on the basis of factors like race, ethnicity, gender, sexual orienta- tion, disability and socioeconomic class.** Moreover, it seems that **achieving the insult is possible only because there has been a significant history of oppression** of the insulted person. After all, blond jokes can’t really rise to the status of insult, but sexist comments about my gender can.15 Still, as we saw above, the fact that speech is offensive or annoying is not enough to make them proper objects of law, so what makes these cases different? On the Kantian view I have been developing, **hate speech** and speech amounting to harassment are not outlawed because they track private wrongdoing as such, but rather because they tr**ack the state’s historical and current16 inability to provide some group(s) of citizens with rightful conditions of interactio**n. This **type of public law tries to remedy the fact that some citizens have been and still are ‘more equal than others’**. Hence, **if the state finds that it is still unable successfully to provide conditions under which protection and empowerment of its historically oppressed, and thus vulnerable, are secured, then it is within its rightful powers to legally regulate speech and harassment to improve its ability to do so. By putting its weight behind historically oppressed** and vulnerable **citizens, the state seeks to overcome the problems caused by its lack of recognition in the past and its current failure to provide conditions in which its citizens interact with respect for one as free and equal**. Therefore, whether or not any instance of speech actually achieves insult is inconsequential, for that is not the justification for the state’s right to outlaw it. Rather, **laws regulating speech and harassment track the state’s systemic inability to provide rightful interaction for all of its citizens**. Note that this argument does not, nor must it, determine which particular usages of hate speech and speech amounting to harassment should be banned. It only explains why certain kinds and circumstances of speech and harassment can and should be outlawed and why public law, rather than private law, is the proper means for doing so. Determining which types and how it should be banned is matter for public debate and reflection followed by public regulation on behalf of all citizens.

#### Hate speech violates freedom – it restricts the availability of ends and can’t be avoided

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

Racist hate messages are rapidly increasing and are widely distributed in this country using a variety of low and high technologies.82 **The negative effects of hate messages are real and immediate for the victims**.83 **Victims of vicious hate propaganda have experienced physiological symptoms and emotional distress ranging from fear in the gut, rapid pulse rate and difficulty in breathing, nightmares, post-traumatic stress disorder, hypertension, psychosis, and suicide.**84 **Professor Patricia Williams has called the blow of racist messages "spirit murder" in recognition of the psychic destruction victims experience. Victims are restricted in their personal freedom. In order to avoid receiving hate messages, victims have had to quit jobs, forgo education, leave their homes, avoid certain public places, curtail their own exercise of speech rights, and otherwise modify their behavior and de- meanor**.86 The recipient of hate messages struggles with inner turmoil. **One subconscious response is to reject one's own identity as a victim- group member**.87 As writers portraying the African-American experience have noted, the price of disassociating from one's own race is often sanity itself.88

#### Hate speech is intentional.

**Delgado:** Delgado, Richard [J.D. University of California, Berkeley, 1974. Professor of Law, UCLA Law School.] “WORDS THAT WOUND: A TORT ACTION FOR RACIAL INSULTS, EPITHETS, AND NAME-CALLING.” *Harvard Civil Rights Civil Liberties Law Review.* Volume 17. 1982. RP

**The need for legal redress for victims also is underscored by the fact that racial insults are intentional acts. The intentionality of racial insults is obvious: what other purpose could the insult serve? There can be little doubt that the dignitary affront of racial insults, except perhaps those that are overheard, is intentional and therefore most reprehensible. Most people today know that certain words are offensive and only calculated to wound** No other use remains for such words as "nigger," "wop," "spick," or "kike."

#### Holocaust denial amounts to a contradiction of the will.

**Varden**, Helga, “A Kantian Conception of Free Speech,” in Freedom of Expression in a Diverse World, edited by Deirdre Golash. New York: Springer, 2010. RP

Let me say briefly how this account of rightful honor analyzes cases like Holocaust-denial. **Part of what makes denying the Holocaust different from other types of defamation is that it involves people who are no longer alive. On the Kantian approach I am advancing, one’s reputation is seen as intimately connected with how one has interacted normatively with others** (6: 291). To interact normatively is to be capable of normativity or capable of interacting qua ‘nou- mena’, as Kant says, and not merely ‘qua phenomena’ or as embodied beings gov- erned by laws of nature. It is qua noumena that we are capable of deeds or of having actions imputed to us. And it is qua noumena that we can still be defamed long after we are dead. **Because right tracks normative relations, that one is no longer alive is beside the point**. What is more, anyone – “relatives or strangers” – can challenge the lies told by another on behalf of the dead. Indeed, the one challenging the defa- mation does so in virtue of her own duty to ensure the conditions under which we can have rightful honor (6: 295). **The reason is that those who spread such lies do not only express an unwillingness to respect those they defame in particular, but also they display a general unwillingness to interact in a way compatible with the rightful honor of everyone**. The absence of defamation is necessary for public opinion to be reconcilable with each person’s right to freedom and the corresponding duty to be an honorable being. **By defaming the dead, a person aims to falsify the public opinion, upon which everyone is dependent for rightful honor**. Consequently, every member of the public has a right to challenge such lies on behalf of the dead.

#### Clear and present danger is obviously a reasonable exception—when the public good is at risk that speech is no longer neutral

ACRL 15 (Arab-American Civil Rights League, “Arab Festival ruling: Does freedom of speech outweigh public safety?” November 5, 2015, <https://acrlmich.org/arab-festival-ruling-does-freedom-of-speech-outweigh-public-safety/>

“The issue of the First Amendment has to take a back seat when it becomes clear and present danger to public safety,” Ayad said. “Not only was there clear and present danger, there was an assault that took place. A riot was about to break. The Circuit (Court) decision is saying you cannot take any action until a riot breaks out. Think about how ridiculous that sounds.” Ayad said the court ruling implies that the sheriff’s office had a clear understanding and objective of what should have been done in that situation. However, he pointed out that it seemed even the 15- body Sixth Circuit bench had difficulty reaching a decision. Seven of the judges believed the county responded accordingly. Ayad added that the Bible Believers would’ve most likely still sued the Sheriff’s Department even if the group had been allowed to conclude its protest or if one of their demonstrators had ended up injured. “The Sherriff’s Department was in a ‘damned if you do, damned if you don’t’ situation,” Ayad said. “This puts an unfair burden on law enforcement agencies. If high judges can’t figure out what police officers are supposed to do, how can you say there is a set precedent? It shows that there is no clear policy over what law enforcement should do in this type of situation.” Many would say the incident at the Arab Festival in 2012 was the final boiling point that resulted in its demise. In the years prior, the festival began earning a reputation as a stomping ground for religious disputes that would result in flaring tensions. The city of Dearborn feared liability issues, pressuring the county to step in to manage security at the event in its final years. Police had been expecting the presence of the Bible Believers at the 2012 festival. A letter was sent to the county days in advance to alert them of the demonstration. In an interview last year, Wayne County Sheriff Benny Napoleon said the county recognized and allowed the group to demonstrate its First Amendment rights. “They have a right to free speech, but they also have to do it in a reasonable manner that would not jeopardize public safety,” Napoleon told The Arab American News. “We didn’t care what the content of their speech was. It wasn’t until we thought that they were an imminent threat to public safety that we shut them down. I think we did the right thing.”

### A2 Phil Affs

#### There are tons of exceptions to the First Amendment in the status quo – that non-uniques Aff offense.

**Delgado and Stefancic:** Richard Delgado and Jean Stefancic [Delgado is Charles Inglis Thomson Professor of Law, University of Colorado. J.D., U. Cali- fornia-Berkeley, 1974. Stefancic is theTechnical Services Librarian, University of San Francisco School of Law. M.L.S., Simmons College, 1963; M.A., University of San Francisco, 1989. “FOUR OBSERVATIONS ABOUT HATE SPEECH.” *Wake Forest Law Review.* Volume 44. 2009. RP

**Not all speech is free. The current legal landscape contains many exceptions and special doctrines corresponding to speech that society has decided it may legitimately punish. Some of these are: words of conspiracy; libel and defamation; copyright violation; words of threat; misleading advertising; disrespectful words uttered to a judge, police officer, or other authority figure; obscenity; and words that create a risk of imminent violence. If speech is not a seamless web, the issue is whether the case for prohibiting hate speech is as compelling as that underlying existing exceptions.** First Amendment defenders often assert that coining a new exception raises the specter of additional ones, culminating, potentially, in official censorship and Big Brother. But our tolerance for a wide array of special doctrines suggests that this fear may be exaggerated and that a case-by-case approach may be quite feasible. **How important is it to protect a black undergraduate walking home late at night from the campus library? As important as a truthful label on a can of dog food or safeguarding the dignity of a minor state official?** Neither free-speech advocates nor courts have addressed matters like these, but a rational approach to the issue of hate-speech regulation suggests that they should.

#### Their impacts are non-unique – we accept limits on free speech ALL THE TIME.

**Wise:** Wise, Tim [Timothy Jacob "Tim" Wise is an American anti-racism activist and writer. Since 1995, he has given speeches at over 600 college campuses across the U.S.] “Hate Speech Codes Will Not End Racism and Hate Crimes.” *Opposing Viewpoints.* 2007. RP

-Free Speech absolutionism incoherent

-Limits on fighting words, libel, more

**On the one hand, the free speech folks ignore several examples of speech limitations that we live with everyday, and that most all would think legitimate. So, we are not free to slander others, to print libelous information about others, to engage in false advertising, to harass others, to print and disseminate personal information about others** (such as their confidential medical or financial records), to engage in speech that seeks to further a criminal conspiracy, to speak in a way that creates a hostile work environment (as with sexual harassment), to engage in plagiarized speech, or to lie under oath by way of dishonest speech. **In other words, First Amendment absolutism is not only inconsistent with Constitutional jurisprudence; it is also a** moral and practical absurdity**, as these and other legitimate limitations make fairly apparent.**

#### A risk of hate speech outweighs – we should side with the victim – Rawlsian systems also negate.

**Delgado and Stefancic:** Richard Delgado and Jean Stefancic [Delgado is Charles Inglis Thomson Professor of Law, University of Colorado. J.D., U. Cali- fornia-Berkeley, 1974. Stefancic is theTechnical Services Librarian, University of San Francisco School of Law. M.L.S., Simmons College, 1963; M.A., University of San Francisco, 1989. “FOUR OBSERVATIONS ABOUT HATE SPEECH.” *Wake Forest Law Review.* Volume 44. 2009. RP

Two final aspects of hate speech are incessancy—the tendency to recur repeatedly in the life of a victim—and compounding. A victim of a racist or similar insult is likely to have heard it more than once. In this respect, a racial epithet differs from an insult such as “You damn idiot driver” or “Watch where you’re going, you klutz” that the listener is apt to hear only occasionally. Like water dripping on stone, racist speech impinges on one who has heard similar remarks many times before. Each episode builds on the last, reopening a wound likely still to be raw. The legal system, in a number of settings, recognizes the harm of an act known to inflict a cumulative harm. Ranging from eggshell plaintiffs to the physician who fails to secure fully informed consent, we commonly judge the blameworthiness of an action in light of the victim’s vulnerability. **When free-speech absolutists trivialize the injury of hate speech as simple offense, they ignore how it targets the victim because of a condition he or she cannot change and that is part of the victim’s very identity.** Hate speakers “pile on,” injuring in a way in which the victim has been injured several times before. The would-be hate speaker forced to keep his thoughts to himself suffers no comparable harm. **A comparison of the harms to the speaker and the victim of hate speech, then, suggests that a regime of unregulated hate speech is costly, both individually and socially. Yet, even if the harms on both sides were similar, one of the parties is more disadvantaged than the other, so that Rawls’s difference principle suggests that, as a moral matter, we break the tie in the victim’s favor**. Moreover, the magnitude of error can easily be greater, even in First Amendment terms, on the side of nonregulation. Hate speech warps the dialogic community by depriving its victims of credibility. Who would listen to one who appears, in a thousand scripts, cartoons, stories, and narratives as a buffoon, lazy desperado, or wanton criminal? **Because one consequence of hate speech is to diminish the status of one group vis-à-vis all the rest, it deprives the singled-out group of credibility and an audience, a result surely at odds with the underlying rationales of a system of free expression**.

#### The most pragmatic approach to speech is judicial balancing – protecting speech sometimes but not when it trades off with more fundamental rights.

**Goldberg:** Goldberg, Erica [Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 2016).] “FREE SPEECH CONSEQUENTIALISM.” *Columbia Law Review.* Volume 116. 2016. RP

But that is not always possible. **A jurisprudence that never engaged in balancing would be absolutist in ways that both overprotect and underprotect speech. Some kind of consideration of speech harms and benefits to determine which speech is constitutionally protected—what this Article terms “free speech consequentialism” —is unavoidable at some point in the First Amendment analysis. Even if courts look first to purposivist or rights-based considerations, courts inevitably confront their views about the value of the speech at issue in relation to the harms it causes**, often in light of their theories about the instrumental goals of the First Amendment.

#### Absolutionist approaches to free speech aren’t pragmatic – they trade off with other rights and ignore these consequences

**Goldberg:** Goldberg, Erica [Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 2016).] “FREE SPEECH CONSEQUENTIALISM.” *Columbia Law Review.* Volume 116. 2016. RP

This Article argues that courts should constrain free speech consequentialism by considering only the speech harms that are sufficiently similar to conduct harms when evaluating the harms caused by speech. **Speech harms typically have unique properties, such as being context dependent and caused by diffuse parties, but some harms caused by speech resemble the more direct and immediate harms arising in paradigmatic cases of conduct**. Analogizing speech harms to conduct harms would allow courts to protect individuals from the more tangible harms caused by speech while preserving the specialness of speech’s virtues. After describing and justifying this constrained approach to free speech consequentialism, this Article then applies the proposal to analyze timely and difficult free speech issues. **Strong free speech protections come at the expense of many types of speech-related harms, including emotional distress, privacy intrusions, reputational damage, and violence provoked in audiences**. A recent wave of scholarship argues for more explicit and more heavy-handed forms of free speech consequentialism to remedy these harms. **Scholars have begun to criticize free speech jurisprudence for being dismissive of harm, and for not properly distinguishing the different mechanisms by which speech causes harm. Although the First Amendment currently occupies a vaunted position in our legal and cultural practices, scholars have begun to use arguments sounding in consequentialism to chip away at the rules-based First Amendment regime.**

#### Free speech is NOT absolute.

**Goldberg:** Goldberg, Erica [Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 2016).] “FREE SPEECH CONSEQUENTIALISM.” *Columbia Law Review.* Volume 116. 2016. RP

**Scholars who espouse explicitly consequentialist theories of the First Amendment believe that free speech’s value lies in advancing particular ends, such as truth or democratic self-government. These free speech consequentialists argue that speech can and should be suppressed when a given instance of speech actually works against those ends, or, more generally, when the benefits of that speech are outweighed by other harms. These scholars advocate for a variety of approaches to balancing speech rights against other interests and may have expansive or limited conceptions of which speech should be protected, but they share the view that speech is valuable to the extent it achieves particular ends. In recent years, based in part on technological advancements that facilitate speech harm, scholars have argued for the regulation of revenge porn, cyberbullying and internet harassment, and the disclosure of true details about people’s identities or locations, based on the perceived minimal benefits associated with these kinds of speech as compared to the substantial harms such speech generates**. Scholars often advocate for speech regulations to occur through tort law, which allows private values to be weighed against First Amendment concerns.

#### Even if free speech is generally good, it shouldn’t be absolute – it trades off with other, more important rights

**Goldberg:** Goldberg, Erica [Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 2016).] “FREE SPEECH CONSEQUENTIALISM.” *Columbia Law Review.* Volume 116. 2016. RP

**Even scholars who favor what they deem nonconsequentialist theories of free speech, and who believe, for example, that free speech has inherent value and is a right of autonomous moral agents, will in some circum stances balance these values against the harms speech causes. This balancing would occur for so-called nonconsequentialists either in defining what constitutes speech, in determining which cate gories of speech are protected, or in evaluating whether speech that is protected can nonetheless be prohibited because its harms greatly outweigh its virtues. 17 Some scholars would argue that free speech rights are balanced not against harms but against other rights, such as the right to privacy, property, or reputation.** However, unless one of the rights at issue is defined absolutely, resolving this conflict would also require considera tion of the harms at issue and the value of the speech. Thus, the question becomes not whether free speech consequentialism is appropriate, but how harms caused by speech should be accounted for in First Amendment jurisprudence.

#### Equal distribution of rights means you negate – the harms of hate speech disproportionately accrue to certain groups, so absolute free speech is bad.

**Goldberg:** Goldberg, Erica [Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 2016).] “FREE SPEECH CONSEQUENTIALISM.” *Columbia Law Review.* Volume 116. 2016. RP

**Many scholars who advance these consequentialist arguments focus not only on maximizing welfare, but on distributional concerns. Schauer notes the distributional concern that the costs of speech are “rarely borne equally, or even fairly” throughout the population**. 81 Scholars like Danielle Citron and Mary Anne Franks argue that **harms from speech that disproportionately befall women are more likely to be minimized, compounding the problem of distributional inequity of speech harms. Concerns with the distribution of harms or concepts like fairness could be considered deontological, not consequentialist, values.** 83 However, consequentialism as a moral philosophy focuses on distribution as part of overall outcome, with the needs of the disadvantaged sometimes adding more to total welfare due to diminishing marginal returns on welfare. 84 Plus, most scholars concerned with fairness still resort to weighing speech harms to particularly vulnerable populations against their benefits when arguing in favor of greater regulation of speech. **If courts followed the lead of scholars and began to seriously evaluate empirical evidence of the harms of speech and devalue its benefits, America’s exceptional commitment to strong free speech protections would be greatly undermined**. There is a greater chance for courts, based on their own subjective views or ideological priors, to decide that certain speech, even core speech, is too harmful to be tolerated. **Perhaps the only principled way to deal with speech harms is to minimize them,** assume that individuals can largely manage them (in contrast to harms caused by conduct), and believe that the marketplace of ideas remedies them.

### A2 Slippery Slope

#### Speech codes don’t erode democratic protections – they increase them – other countries prove.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “THE SPEECH WE HATE”: FIRST AMENDMENT TOTALISM, THE ACLU, AND THE PRINCIPLE OF DIALOGIC POLITICS.” *Arizona State Law Journal.* Winter 1995. RP

**If protecting hate speech and pornography were essential to safeguarding freedom of inquiry and a flourishing democratic politics, we would expect to find that nations that have adopted hate speech rules and curbs against pornography would suffer quickly a sharp erosion of the spirit of free inquiry. But this has not happened. A host of industrialized nations, including Sweden, Italy, Canada, and Great Britain, have instituted laws against hate speech and hate propaganda**, in many cases to comply with international treaties and conventions requiring such action. Many of these countries traditionally respect free speech at least as much as the United States does. **No such nation has reported any erosion of the atmosphere of free speech or debate. At the same time, the United States, which until recently has refused to put such rules into effect, has a less than perfect record of protecting even political speech. United States agencies have persecuted communists, hounded Hollywood writers out of the country, and harassed and badgered such civil rights leaders as Josephine Baker, Paul Robeson, and W. E. B. DuBois in a campaign of personal and professional smears** that ruined their reputations and destroyed their ability to earn a living. In recent times, conservatives inside and outside the Administration have disparaged progressives to the point where many are now afraid to describe themselves \*1291 as “liberals.” Controversial artists are denied federal funding. Museum exhibits that depict the atomic bombing of Hiroshima have been ordered modified. **If political speech lies at the center of the First Amendment, its protection seems to be largely independent of what is taking place at the periphery. There may, indeed, be an inverse correlation. Those institutions most concerned with social fairness have proved to be the ones most likely to promulgate anti-hate speech rules. Part of the reason seems to be the recognition that hate speech can easily silence and demoralize its victims, discouraging them from participating in the life of the institution. If so, enacting hate speech rules may be evidence of a commitment to democratic dialogue, rather than the opposite, as some of its opponents maintain.**

#### The slippery slope is empirically denied – countries had more liberty.

**McElwee:** McElwee, Sean [Contributor, The Huffington Post] “The Case for Censoring Hate Speech.” *The Huffington Post.* July 2013. RP

People who argue against such rules generally portray their opponents as standing on a slippery precipice, tugging at the question “what next?” We can answer that question**: Canada, England, France, Germany, The Netherlands, South Africa, Australia and India all ban hate speech. Yet, none of these countries have slipped into totalitarianism. In many ways, such countries are more free when you weigh the negative liberty to express harmful thoughts against the positive liberty that is suppressed when you allow for the intimidation of minorities.**

#### Allowing hate speech sets an even more dangerous slippery slope. If we permit racially targeted hate speech, then what other racist actions will the state permit?

**Delgado and Stefancic:** Delgado, Richard. [Professor of Law, University of Colorado] Stefancic, Jean. [Research Associate, University of Colorado School of Law] “Hateful Speech, Loving Communities: Why Our Notion of “A Just Balance” Changes So Slowly.” *California Law Review,* Vol. 82, July 1994. MZ

**Concerns about slippery slopes and dangerous administrators also arise when the hate speech controversy is viewed through a free-speech lens: if we allow face-to-face racial invective to be bridled, will we not soon find ourselves tolerating restrictions on classroom speech[?] or political satire in the school newspaper?**3 If we permit our fragile web of speech protection to suffer one rent, might not others soon follow? Moreover, someone will have to adjudicate complaints brought under the new rules. Is there not a danger that the judge or administrator will turn into a narrow-minded cen- sor, imposing his or her notion of political orthodoxy on a campus climate that ought to be as free as possible?' **Hate speech rule advocates, however, will see the controversy in dif- ferent terms. For them, [T]he relevant issue is whether campuses are free to impose reasonable rules to protect the dignity and self-regard of vulnerable young African American undergraduates and other targets of hate speech.**5 These advocates place equality at the center of the controversy and portray the defenders of racist invective as seeking to attack values emanating from the equality-protecting Constitutional amendments.6 Since these values are vital to our system ofjustice, rule advocates maintain that it is incumbent on free speech advocates to show that the hate-speaker's interest in hurling racial invective rises to the requisite level of compellingness. **They will insist that this interest be advanced in the way least damaging to equality, and they, too, will raise line-drawing and slippery slope concerns, but [come] from the opposite direction. If society does not intervene to protect equality from this intrusion, where will it all stop?7 Rule advocates will raise concerns about the administrator who will make decisions under the code, but again from the opposite direction: they will want to make sure that the hearing officer is sensitive to the delicate nuances of racial supremacy in the incidents likely to come before him or her.'**

#### Not true – ignores history The slippery slope argument is non-sense, history and basic logic are on our side. Muravchik 10

Joshua Muravchik has been recognized by the Wall Street Journal as “maybe the most cogent and careful of the neoconservative writers on foreign policy.” He is a fellow at the Foreign Policy Institute of the Johns Hopkins University School for Advanced International Studies and formerly a resident scholar at the American Enterprise Institute. He has published more than three hundred articles on politics and international affairs, Free Speech and the Myth of the Slippery Slope, World Affairs Journal, October 15, 2010 EE

Moreover, a wealth of political history suggests that the slippery slope is a phantom. Almost all European countries ban “hate speech” and many ban Holocaust-denial. This goes against the American grain, but those countries have not sacrificed any other freedoms as a result. Or consider West Germany. The Americans and Germans who framed the Basic Law of the Bonn Republic worked in the terrible shadow of Hitler’s destruction of the Weimar Republic, Germany’s only prior democratic experiment. They were also in uncomfortable proximity to Soviet-run East Germany. So they banned both the Nazi and Communist Parties on the grounds that they were totalitarian movements, aiming to destroy democracy itself. Far from turning into a slippery slope, under this system freedom took hold in Germany at long last and apparently forever. What about America’s experience? The ambit of tolerated speech has grown relentlessly wider. In the realm of obscenity standards, we have gone from Lady Chatterly, to bare breasts, to full frontal, to pictorial gynecology. If there is any slippery slope, it seems to be tilted in the opposite direction from the one invoked by conventional wisdom. Were the court to uphold some constraints on speech, that would merely put us back to some earlier point in the unfolding of American free speech standards. When we were at that point, whatever and whenever it was, we did not slide downward to dictatorship but forward to where we stand today. Where is the danger? I can think of no example in which rights disappeared down a slippery slope. Yes, the Communists used “salami tactics” in subjugating Eastern Europe, but the progressive loss of freedom was scarcely unforeseen. The Kremlin was bent on imposing its model of totalitarianism one way or another on the countries its troops occupied; the salami slices merely made the going smoother. The slippery slope peril is a myth, much like the libertarian bogeyman that the welfare state will lead to dictatorship. In practice, European and other countries have infringed economic freedom without any loss of political freedoms. And they have also constrained speech in ways that most Americans (including me) wouldn’t do but with no further loss of freedom. A sovereign, self-governing people is capable of drawing lines. To argue by imagery and analogy, as does the conventional wisdom apotheosized by the Times, rather than by logic and history, is, you might say, to step onto a slippery slope at the bottom of which lies lots of freedom of thought but very little thinking.

## Advantage Areas

### A2 Unions

#### Unions enable bad, criminal teachers to keep their jobs.

**Kays:** Kays, Heather [Contributor, The American Spectator] “The Top Five Reasons Teachers Unions Need to Change.” *The American Spectator.* August 2015. RP

**A hundred years ago, teachers first formed unions in the U.S.** At that time, too many teachers lost their jobs for reasons such as an unplanned pregnancy, or gaining too much weight. Wages and working conditions back then could often be, well, substandard. **Today, by contrast, union-negotiated employment policies protect mediocre and bad teachers from consequences for abysmal performance and even, in some cases, criminal activities. Teachers who feel misrepresented and have no desire to belong to a union are nevertheless forced to pay for these organizations**. Here are five reasons states should change their laws regarding teachers unions and education job protection. Number 5: **Last in, first out (LIFO) provisions ensure no matter how effective a teacher is, when the time for layoffs arrives, whoever was the last to walk in the door is the first one out. These practices, long acknowledged as unfair to students and teachers alike, stifle creativity and innovation as newer teachers are shoved out the door year after year across the country.** [**This year all non-tenured teachers, about 100 of them, lost their jobs because of budget cuts in the Willmar School District in Minnesota.**](http://www.wctrib.com/news/local/3696347-willmar-school-board-cuts-1-million-lays-non-tenured-teachers) The effectiveness of their teaching was not a factor. In several instances in various states, teacher of the year honorees have lost their jobs this way. **Good teachers are losing their jobs for all the wrong reasons, and bad teachers continue to disserve their students and the taxpayers who pay their salaries and benefits.**

#### Unions violate freedom – teachers are forced to pay dues even if they don’t want to take part.

**Kays:** Kays, Heather [Contributor, The American Spectator] “The Top Five Reasons Teachers Unions Need to Change.” *The American Spectator.* August 2015. RP

Number 4: **Mandatory union dues require teachers to pay for unions and their political activities even if they don’t want to, or to pay an “agency fee” if they opt out of the union.** [The U.S. Supreme Court is reviewing the constitutionality of mandatory union dues in *Friedrichs* v. *California Teachers Association*.](http://www.ocregister.com/articles/union-669424-teachers-friedrichs.html) **The plaintiffs argue mandatory dues violate their freedom of association, which should include the freedom not to associate with a particular group. These public school teachers also say mandatory dues violate their First Amendment rights because unions spend the teachers’ money to support political causes with which the teachers don’t agree.**

#### Unions misrepresent teachers

**Kays:** Kays, Heather [Contributor, The American Spectator] “The Top Five Reasons Teachers Unions Need to Change.” *The American Spectator.* August 2015. RP

Number 3: **Many teachers feel misrepresented by their unions and disagree strongly with their unions’ comments on social issues. Case in point: Hundreds of teachers in Staten Island, New York planned a counter-protest after United Federation of Teachers (UFT) leaders marched alongside Al Sharpton during a protest against police brutality in the wake of the Eric Garner incident.** [**A group of teachers printed more than 600 T-shirts expressing support for the New York Police Department, to be worn by teachers on the first day of classes, but the counter-protest was called off under pressure from the city’s Department of Education and UFT.**](http://www.silive.com/news/index.ssf/2014/09/nypd_teacher_t-shirt_protest_f.html)

#### Unions are corrupt and bad for the economy

**Kays:** Kays, Heather [Contributor, The American Spectator] “The Top Five Reasons Teachers Unions Need to Change.” *The American Spectator.* August 2015. RP

Number 1: **Each election cycle, teachers unions spend millions of dollars — taxpayer dollars — protecting their interests. Teachers buy and sell politicians just like any other special-interest group does. The captive politicians then negotiate sweetheart deals for the unions** — [contracts giving teachers union members anything and everything, even unlimited free plastic surgery, including breast implants.](http://www.theatlantic.com/business/archive/2012/01/why-does-buffalo-pay-for-its-teachers-to-have-plastic-surgery/251533/) **Spurred by the unions’ hunger for more dues-paying members, the number of administrators and other non-teaching personnel continues to rise far out of proportion to student enrollment**. Collective bargaining agreements are written like celebrity contracts, yet union leaders claim education funding is inadequate. Teachers unions should not have more power over education than parents, taxpayers, policymakers, and teachers, but they do. **States must reform their laws so ineffective teachers can be removed, effective teachers can stay, and teachers have a real choice as to whether they want to join a union. It will take a serious effort to do so, given the unions’ massive political power**. But an education advocate can dream, can’t she?

### A2 Paternalism Bad

#### The Aff destroys moral development – unrestricted free speech permanently scars college students.

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

A marked rise of racial harassment, hate speech, and racially motivated violence marks our entry into the 1990s. **The epidemic of racist incidents on university campuses is a disturbing example of this.** The application of the first amendment to racist speech, once discussed hypothetically in law schools, is now debated in classrooms where hate messages have actually appeared.248 The next round of judicial opinions tangling with hate speech and the first amendment may well come from the universities. University administrators at public institutions are bound by the first amendment under state action doctrine. At private institutions, the principle of free speech is often evoked as a matter of ethics, regardless of whether the Constitution applies directly. The university case raises unique concerns. **Universities are special places, charged with pedagogy, and duty-bound to a constituency with special vulner- abilities. Many of the new adults who come to live and study at the major universities are away from home for the first time, and at a vul- nerable stage of psychological development**. Students are particularly dependent on the university for community, for intellectual development, and for self-definition. **Official tolerance of racist speech in this setting is more harmful than generalized tolerance in the com- munity-at-large**. It is harmful to student perpetrators in that it is a lesson in getting-away-with-it that will have lifelong repercussions. **It is harmful to targets, who perceive the university as taking sides through inaction**, and who are left to their own resources in coping with the damage wrought.250 **Finally, it is a harm to the goals of inclusion, education, development of knowledge, and ethics that universities exist and stand for**.251 Lessons of cynicism and hate replace lessons in critical thought and inquiry.

#### As opposed to the real world, professors must maximize education, so some restrictions on speech are necessary.

**Posner writes:** Posner, Eric. [Professor, University of Chicago Law School, Author, The Twilight of International Human Rights Law] “Universities Are Right—and Within Their Rights—to Crack Down on Speech and Behavior.” *Slate.com*, View From Chicago, 2015. EL

**Teaching is tricky.** Everyone understands that **[A] class is a failure if students refuse to learn because they feel bullied or intimidated, or if ideological arguments break out that have nothing to do with understanding an idea.** **It is the responsibility of the professor to conduct the class in such a way that maximal learning occurs, not maximal speech. That’s why no teacher would permit students to launch into anti-Semitic diatribes in a class about the Holocaust[.]**, however sincerely the speaker might think that Jews were responsible for the Holocaust or the Holocaust did not take place. And even a teacher less scrupulous about avoiding offense to gay people would draw a line if a student in the Rawls class wanted to argue that Jim Crow or legalization of pedophilia is entailed by the principles of justice. **While advocates of freedom of speech like to claim that falsehoods get squeezed out in the “marketplace of ideas,” in classrooms they just receive an F.**

## 2NR/ Ev Debate

### A2 HS Not CPS

#### SCOTUS rulings prove that hate speech is constitutionally protected.

**Volokh:** Volokh, Eugene [Contributor, The Washington Post] “No, there’s no ‘hate speech’ exception to the First Amendment.” *The Washington Post.* May 2015. RP

**I keep hearing about a supposed “hate speech” exception to the First Amendment, or statements such as, “This isn’t free speech, it’s hate speech**,” or “When does free speech stop and hate speech begin?” **But there is no hate speech exception to the First Amendment. Hateful ideas (whatever exactly that might mean) are just as protected under the First Amendment as other ideas. One is as free to condemn Islam — or Muslims, or Jews, or blacks, or whites, or illegal aliens, or native-born citizens — as one is to condemn capitalism or Socialism or Democrats or Republicans. To be sure, there are some kinds of speech that are unprotected by the First Amendment. But those narrow exceptions have nothing to do with “hate speech” in any conventionally used sense of the term. For instance, there is an exception for “fighting words” — face-to-face personal insults addressed to a specific person, of the sort that are likely to start an immediate fight. But this exception isn’t limited to racial or religious insults, nor does it cover all racially or religiously offensive statements. Indeed, when the City of St. Paul tried to specifically punish bigoted fighting words, the Supreme Court held that this selective prohibition was unconstitutional** (R.A.V. v. City of St. Paul (1992)), even though a broad ban on all fighting words would indeed be permissible. (And, notwithstanding CNN anchor Chris Cuomo’s Tweet that “hate speech is excluded from protection,” and his later claims that by “hate speech” he means “fighting words,” the fighting words exception is not generally labeled a “hate speech” exception, and isn’t coextensive with any established definition of “hate speech” that I know of.)

#### Multiple legal scholars prove that hate speech is in fact protected.

**Carroll:** Carroll, Lauren [Contributor, Punditfact] “CNN’s Chris Cuomo: First Amendment doesn’t cover hate speech.” *Punditfact.* May 2015. RP

Hate speech is not the same thing as free speech, wrote CNN anchor Chris Cuomo on the ultimate forum for public discourse: [Twitter](https://twitter.com/ChrisCuomo/status/595934009764487168). Amid debate about free speech after a shooting at an anti-Muslim protest in Texas , a user tweeted at Cuomo: "Too many people are trying to say hate speech (doesn’t equal) free speech." In response, Cuomo, who has a law degree, said, "It doesn't. Hate speech is excluded from protection. Don’t just say you love the Constitution … read it." The claim that the Constitution doesn’t protect hate speech incited heavy backlash, so we decided to flesh it out and see if there’s any truth to Cuomo’s statement. First let’s get the obvious out of the way: The concept of "hate speech" -- speech that negatively targets people based on personal traits like religion or race -- is not addressed in the Constitution. The First Amendment of the Constitution, included in the Bill of Rights, says: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." That may seem cut and dried, but as with the rest of the Constitution, there are nuances to the concept of free speech**. In the course of interpreting the amendment, courts have decided that certain speech does not fall under protections offered by the First Amendment. Unprotected speech includes things such as threats, child pornography and "**[**fighting words**](https://www.law.cornell.edu/wex/fighting_words)**" (speech that would likely draw someone into a fight, such as personal insults). But hate speech is not included in that list**. However, sometimes hate speech can also be considered "fighting words" or a threat. In those cases, hate speech would be excluded from protections offered by the First Amendment, said James Weinstein, an expert in free speech at Arizona State University’s Sandra Day O’Connor Law School. **For example, if someone hurled racial epithets during a heated argument with another individual, that could be considered both fighting words and hate speech, in which case it would not have First Amendment protection. But it would be unconstitutional to ban someone from putting those same words on a picket sign at a protest -- it would still be hate speech, but it wouldn’t fall under one of the unprotected categories. "**With that caveat, the overwhelming understanding is that ‘hate speech’ is constitutionally protected in the United States," said Michael Herz, co-director of the Floersheimer Center for Constitutional Democracy at Cardozo Law. "Indeed, that protection makes this country [different from most other countries](http://www.nytimes.com/2008/06/11/world/americas/11iht-hate.4.13645369.html?pagewanted=all&_r=0) in the world." To his credit, Cuomo later clarified his position and said he was referring to the type of hate speech that falls under unprotected categories -- specifically citing the [1941 Supreme Court ruling](http://www.oyez.org/cases/1940-1949/1941/1941_255) in Chaplinsky vs. New Hampshire, which excluded fighting words from the First Amendment. (In the Chaplinsky case, the fighting words were not hate speech; rather they were "God damned racketeer" and "damned fascist.") "Of course the First Amendment does not expressly mention hate speech among its six protections in its text," Cuomo said. "I meant to refer to the relevant case law about the (First Amendment) to see what is protected. **There you quickly find that hate speech is almost always protecte**d. The keyword is ‘almost.’ Hate speech can be prohibited; that is why I keep citing the Chaplinsky case and the fighting words doctrine." ([Read his full response on Facebook.](https://www.facebook.com/ChrisCCuomo/posts/1585229788396338))Even with this clarification, Weinstein said Cuomo’s argument isn’t without holes. If a statute bans hate speech, it has to be because it counts as a threat or fighting words -- not simply because it is hate speech. This may seem like a slight nuance, but it’s important**. In 2002, the** [**Supreme Court ruled**](http://www.oyez.org/cases/2000-2009/2002/2002_01_1107) **that it’s constitutional for a state to have a statute that bans cross-burning -- but only if prosecutors can prove criminal intent to threaten. They cannot, for example, ban a burning cross used only to demonstrate political ideology. In another cross-burning case, the** [**Supreme Court ruled in 1991**](http://www.oyez.org/cases/1990-1999/1991/1991_90_7675) **that it’s unconstitutional to up the penalty or charge people with a crime solely because their actions constitute hate speech.** "The fact that something is hate speech or not is irrelevant for First Amendment analysis," Weinstein said. Herz, of Cardozo, added that there hasn’t been a fighting words case in the Supreme Court since Chaplinsky in 1941, and he believes it likely would have a different outcome today. Of course, reasonable legal minds can disagree on these nuances. Alexander Tsesis, a First Amendment law professor at Loyola University Chicago, said he believes it can be constitutional to prohibit hate speech, and the 2002 cross-burning ruling is a good example of that. Tsesis said the jury’s still out on whether or not there’s potential for the Supreme Court to ban hate speech more broadly, noting that there’s some potential for laws that prohibit speech that defames an entire group, such as causing a group injury by saying a false stereotype. Although Tsesis believes that would be constitutional, he acknowledged that most scholars disagree. "In the United States, the only two types of hate speech laws likely to survive are those that are likely to elicit an imminent fight and those that are truly threatening," he said. Cuomo said, "Hate speech is excluded from protection" under the First Amendment. The Supreme Court has ruled that certain categories of speech are excluded from constitutional protection, such as a threat or "fighting words." Sometimes, speech can be both a threat and hate speech, in which case it would not necessarily have First Amendment protection. But hate speech on its own -- such as on a picket sign or a blog -- is not excluded from protection. It may only be incidentally excluded. Cuomo tried to clarify his point after the fact, giving an explanation similar to the examples we hashed out here. But on his specific claim, the jurisprudence works against him. We rate his statement False.

### Lotsa Empirics from Wisconsin

#### Wisconsin codes were key to solve racism on campuses

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

**A further concern expressed about the adoption of speech rules was that they would be used to repress the speech of the very groups they were meant to protect. Referring to historical civil rights abuses involving members of racial minorities, opponents of discriminatory speech rules have argued that such regulations can too easily be used against minorities expressing unpopular opi- nions.5 5 There is, however, nothing in the experiences with Wis- consin's rule to show that this has occurred in practice**. Although three complaints were brought against minority group members or females, only one was found to be within the scope of the rule. **In contrast, white males were named as the alleged violators in fifteen of the complaints filed under the rule.5 6 In the ten cases in which discipline was imposed, nine of the students disciplined were white males, and one was a white female. In all ten, the person harassed was female or a minority group member.** Thus, the fear of abusing the rule to the detriment of those intended to be protected has proved unfounded in the cases at Wisconsin.

#### Speech codes are the ONLY way to punish and deter racial slurs on campus.

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

\*\*\*Bracketed for offensiveness

**The existence of circumstances where no misconduct other than verbal harassment is at issue suggests the value of a separate rule treating hate speech. The lack of such a rule leaves a serious gap in the student conduct code, diminishing the university's ability to respond to cruel verbal abuse. Without regulation of discriminatory harassment there is no way for the university to take action against those who call a black student [the n word] "nigger**," a woman "cunt," who scrawl discriminatory epithets, or who place demeaning written materials in private living quarters.54 The fact that a majority of the incidents involving discriminatory speech can be punished because that misconduct happens to occur in conjunction with other student conduct code violations does not diminish the need for a separate rule to address incidents of this type.

#### Speech codes are on balance effective and prevent hate speech – Wisconsin proves.

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

**In sum, the experiences at Wisconsin indicate that the adoption of narrow speech rules has proved to be a workable and generally effective policy. The enforcement of the rule has not stifled lively debate within the academic community, has not been used to repress minorities or other protected groups, and has proven useful in addressing harmful conduct which might otherwise have been ignored. It has served as an affirmation of the university's com- mitment to equal opportunity, and has stimulated debate and discussion concerning verbal discriminatory harassment and the nature of the constitutional right to free speech.** It has been an effective supplement to other disciplinary rules, and aids educa- tional efforts to teach students respect and tolerance. Furthermore, it has provided an additional means of redress for victims of abusive, discriminatory speech. **The rule is therefore, in most respects, a successful policy which has achieved its purposes, and has not led to the kinds of problems originally feared by opponents.**

#### Codes don’t backfire – they’re enforced against white racists mostly – Wisconsin codes prove.

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

**A further concern expressed about the adoption of speech rules was that they would be used to repress the speech of the very groups they were meant to protect. Referring to historical civil rights abuses involving members of racial minorities, opponents of discriminatory speech rules have argued that such regulations can too easily be used against minorities expressing unpopular opi- nions.5 5 There is, however, nothing in the experiences with Wis- consin's rule to show that this has occurred in practice**. Although three complaints were brought against minority group members or females, only one was found to be within the scope of the rule. **In contrast, white males were named as the alleged violators in fifteen of the complaints filed under the rule.5 6 In the ten cases in which discipline was imposed, nine of the students disciplined were white males, and one was a white female. In all ten, the person harassed was female or a minority group member.** Thus, the fear of abusing the rule to the detriment of those intended to be protected has proved unfounded in the cases at Wisconsin.

#### Empirics confirm that speech codes increase awareness about the dangers of hate speech – this is uniquely valuable

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

The practical experiences with the Wisconsin rule discussed above suggest that some of the most serious concerns of the critics of regulation-those related to suppression of speech and misap- plication, for example-have not been realized. Questions remain, however, as to the effectiveness of hate speech rules for purposes of combating campus discrimination and discriminatory attitudes, or for assuring equality of educational opportunity. Some com- mentators have asserted that regulations are inadequate to address the underlying attitudes manifested in hate speech, and that the most effective antidote to discriminatory harassment is not rules, but some combination of education and more speech. These points are well-taken: educational efforts to address discrimination are certainly needed, and may be more effective than a regulatory approach; more speech may indeed be the best counter to discriminatory speech. **It does not follow, however, that a rule regulating discriminatory speech is an ineffective means to these ends. The Wisconsin experience illustrates the value of adopt- ing such a rule as part of more extensive educational and pro- grammatic efforts to deal with discrimination and harassment in the university environment. A rule prohibiting discriminatory speech is useful and effective as an additional response to institutional discrimination in several ways. First, the adoption of a rule, and the debate and discussion accompanying the process of adopting it, provide substantial ed- ucational benefits by focusing public attention on the problem of discriminatory harassment. Second, a rule can be an exercise of institutional speech**, a description of conduct that the university regards as harmful and inappropriate, and an expression of the institution's commitment to do something about it. The increased public awareness and the demonstration of university concern reflected by the adoption of a rule enhance other efforts to eliminate discrimination. Further, since most hate speech occurs under circumstances which do not allow for educational or speech responses**, a rule affords an additional opportunity to reach and educate individual students. At Wisconsin, none of the incidents leading to discipli- nary action under the hate speech rule occurred in classrooms or other forums for debate**; all took place in social or dormitory settings.5 9 In none of the cases did the use of abusive epithets lead to further opportunity for speech. In several, the result was an angry and potentially violent confrontation, while in others the victim was silent.60 As these situations illustrate, racial or discrim- inatory epithets, name-calling, and similar abusive speech do not afford opportunities for debate. More often, they cut it off, leaving the victim without an opportunity to respond.6' **The availability of the rule limiting speech provides a means of responding to a discriminatory problem, redress for the victims, and an occasion for educating the harassing individual.**

#### Only speech codes enable punishment and education for hate speech

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

**Moreover, even when discriminatory harassment is part of a course of misconduct including other violations, the availability of a separate rule covering the expressive conduct can enhance the university's ability to respond. The presence of such a rule makes it possible to distinguish the discriminatory, harassing elements of the misconduct, and to identify and educate students about the separate and distinct kind of harm such behavior causes within the university community. In sum, while it may be possible to address many situations involving hate speech because they involve other student conduct violations, it is more useful and effective to have an additional provision dealing specifically with hate speech**. As the Wisconsin experience demonstrates, there have been, and likely will continue to be, instances of discriminatory harassment which could not be addressed without a separate rule limiting discriminatory expressive behavior. Even if these situations are few in number, their very existence justifies a separate regulatory response.

#### The counterplan empirically solves the chilling of academic dissent

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

-Also in HS disad file

The most serious concerns about adopting a rule restricting discriminatory harassment or hate speech were those involving legal questions as to whether any sort of restriction on expressive behavior could be accepted in a university setting. **The Wisconsin cases, however, provide little evidence to suggest that free expression has been deterred or suppressed as a result of enforcement of the university's antiharassment regulation. In the eighteen months in which it has been in force, a total of thirty-two complaints have been filed alleging violations of the Wisconsin rule.14 Of these, thirteen were dismissed because they were found not to violate the rule;35 two were dismissed following a hearing;** and in ten cases, discipline was imposed. 36 The disci- plinary sanctions imposed included one written apology, one warn- ing letter, seven disciplinary probations and one suspension.37 **All cases resulting in probation or suspension also involved conduct which violated some other provision of the student conduct code- an assault, a threat, or disorderly conduct, for example.38 In no case was discipline imposed in connection with a classroom dis- cussion or expression of opinion.3 9 In most of the cases leading to discipline, the rule violation involved the use of a discriminatory epithet rather than "other expressive behavior."**

#### No PC culture or chilling effect – Wisconsin code proves.

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

**As the controversy over speech rules has continued in the press and other media, they have been cited as evidence of a trend toward thought control, "politically correct" thinking, and other repressive evils.41 There is, however, little in these cases to suggest that the Wisconsin regulation has had the effect of cutting off debate within the university community, or that a narrow restric- tion on discriminatory, harassing speech creates a threat to free expression. Rather, the practical experiences with the Wisconsin rule indicate that the risk of a "chilling effect" on speech from a narrowly applicable rule is minimal or nonexistent.**

### A2 Butler

#### Butler’s justifications for free speech are unwarranted conjecture.

**Douglas-Scott:** Douglas-Scott, Sionaidh [Professor, School of Law, King’s College in London] “PSYCHOANALYSIS, SPEECH ACTS AND THE LANGUAGE OF ‘FREE SPEECH’.” *Res Publica.* Volume 4, Number 1. 1998. RP

Thus Butler's work presents an important challenge to the argument of this paper. This challenge would appear to operate at two levels. **First, it is not clear to what extent Butler actually accepts the notion that speech acts may function as illocutions**. On the one hand, she expresses scepticism about accounts which conflate speech and act, thus seeming to attack Austin (although she provides little in support of this claim). Elsewhere, however, her criticism seems to be directed towards accounts which present speech acts as always efficacious, seeming to suggest that there are many examples of failed performatives w a claim which Austin would, of course, have accepted -- such as the hate speech which does not in fact succeed in constituting its object as victim, thus leaving the way open to a critical response. Since Butler writes of reworking a theory of the performative*,* one assumes that her theory is based on the latter, but her approach is equivocal. Second, Butler generally seems to oppose the state regulation of speech, seeing it as a censorship that itself "produces" an undesirable type of speech which works against a critical refiguration of hate speech by those attacked by it in the first instance. **Although Butler's arguments seem initially distant from those "usual suspects" offered by liberal theorists, on a closer examination, she in fact shares much with them- a distrust of state censorship and official discourse** (even if these undesirables are recast by Butler as examples of productive rather than repressive power). **Butler also seems to display a faith in the ability of language to revitalise itself, to run against the grain, indeed to "work itself pure", which has much in common with liberal optimism in "the market place of ideas" and the salutary powers of free speech.** Butler's belief in refiguration also relies on the ability of victimised groups to rework and redirect offensive ideas against their perpetrators, confident that offensive structures may be destroyed through such novel reiteration. **However, she offers little evidence in support of such optimism - - and evidence is surely required in the face of the more detailed records of injury, victimisation and ultimately silencing offered by such writers as Delgado and Matsuda. Thus, although Butler's work is heavily engaged with the theories which are the focus of this paper and although she provides an important reworking of speech act theory, I submit that her arguments for a politics of the performative are not fatal to those who argue in favour of the regulation of hate speech.**

### A2 Delgado and Ross

#### This makes a trending uniqueness claim in the opposite direction – first line says “as protests have been increasing” which means their impacts should have already occurred.

#### Their protests cancel out – student protests often fight for pro-capitalist movements and conservative ideologies.

**Delgado and Ross:** Sandra Delgado and E. Wayne Ross [Delgado is a doctoral student in Curriculum Studies at the University of British Columbia and Ross is a Professor in the Faculty of Education at the University of British Columbia] “Students in Revolt: The Pedagogical Potential of Student Collective Action in the Age of the Corporate University.” 2016. RP

As students’ collective actions keep gaining more political relevance, student and university movements also establish themselves as spaces of counter-hegemony (Sotiris, 2014). Students are constantly opening new possibilities to displace and resist the commodification of education offered by mainstream educational institutions. As Sotiris (2014) convincingly argues, movements within the university have not only the potential to subvert educational reforms, but in addition, they have become “strategic nodes” for the transformation of the processes and practices in higher education, and most importantly for the constant re-imagination and the recreation of “new forms of subaltern counter-hegemony” (p. 1). The strategic importance of university and college based moments lays precisely in the role that higher education plays in contemporary societies, namely their role in “the development of new technologies, new forms of production and for the articulation of discourses and theories on contemporary issues and their role in the reproduction of state and business personnel.” (p.8) Universities and colleges therefore, have a crucial contribution in “the development of class strategies (both dominant and subaltern), in the production of subjectivities, (and) in the transformation of collective practices” (p.8) The main objective of this paper is to examine how contemporary student movements are disrupting, opposing and displacing entrenched oppressive and dehumanizing reforms, practices and frames in today’s corporate academia. This work is divided in four sections. The first is an introduction to student movements and an overview of how student political action has been approached and researched. The second and third sections take a closer look at the repertoires of contention used by contemporary student movements and propose a framework based on radical praxis that allows us to better understand the pedagogical potential of student disruptive action. The last section contains a series of examples of students’ repertoires or tactics of contention that exemplifies the pedagogical potential of student social and political action. An Overview of Student Movements Generally speaking, students are well positioned as political actors. They have been actively involved in the politics of education since the beginnings of the university, but more broadly, students have played a significant role in defining social, cultural and political environments around the world (Altbach, 1966; Boren, 2001). The contributions and influences of students and student movements to revolutionary efforts and political movements beyond the university context are undeniable. One example is the role that students have played in the leadership and membership of the political left (e.g. students’ role in the Movimiento 26 de Julio - M-26-7 in Cuba during the 50’s and in the formation of The New Left in the United States, among others). Similarly, several political and social movements have either established alliances with student organizations or created their own chapters on campuses to recruit new members, mobilize their agendas in education and foster earlier student’s involvement in politics2 (Altbach, 1966; Lipset, 1969). Students are often considered to be “catalysts” of political and social action or “barometers” of the social unrest and political tension accumulated in society (Barker, 2008). **Throughout history student movements have had a diverse and sometimes contradictory range of political commitments. Usually, student organizations and movements find grounding and inspiration in Anarchism and Marxism, however it is also common to see movements leaning towards liberal and conservative approaches. Hence, student political action has not always been aligned with social movements or organizations from the political left. In various moments in history students have joined or been linked to rightist movements, reactionary organizations and conservative parties** (Altbach, 1966; Barker, 2008). Students, unlike workers, come from different social classes and seemly different cultural backgrounds. As a particularly diverse social group, students are distinguished for being heterogeneous and pluralists in their values, interests and commitments (Boren, 2001). Such diversity has been a constant challenge for maintaining unity, which has been particularly problematic in cases of national or transnational student organizations (Prusinowska, Kowzan, & Zielińska, 2012; Somma, 2012). To clarify, social classes are defined by the specific relationship that people have with the means of production. In the case of students, they are not a social class by themselves, but a social layer or social group that is identifiable by their common function in society (Stedman, 1969). The main or central aspect that unites student is the transitory social condition of being a student. In other words, students are a social group who have a common function, role in society or social objective, which is “to study” something (Lewis, 2013; Simons & Masschelein, 2009). Student movements can be understood as a form of social movement (LuesherMamashela, 2015). They have an internal organization that varies from traditionally hierarchical structures, organizational schemes based on representative democracy with charismatic leadership, to horizontal forms of decision-making (Altbach, 1966; Lipset, 1969). As many other movements, student movements have standing claims, organize different type of actions, tactics or repertoires of contention, 3 and they advocate for political, social or/and educational agendas, programs or pleas.

### A2 Davidson

#### Davidson goes neg – there are time, place, and manner restrictions on speech at the university they studied.

**Davidson:** Davidson, Alexander [Student, California Polytechnic State University] “The Freedom of Speech in Public Forums on College Campuses: A Single-Site Case Study on Pushing the Boundaries of the Freedom of Speech.” June 2016. RP

**There are, however, regulations to the freedom of speech on California Polytechnic State University’s campus**. The right of free expression is a guaranteed right, so long as it does not “interfere with University functions, imperil public safety, obstruct or damage University facilities, or cause individuals to become audiences against their will” (University Organization and Campuswide Policies). **This means that there can be content-neutral restrictions on the speech that takes place on the University’s campus, but there cannot be content-based restrictions made. Content-neutral restrictions deal with time, manner and place - even if the government cannot ban a specific speech, there are times where that speech would be unacceptable. California Polytechnic State University has this in place to preserve the safe operation of the campus.**

#### Davidson’s empirics are awful, and he knows it too.

**Davidson:** Davidson, Alexander [Student, California Polytechnic State University] “The Freedom of Speech in Public Forums on College Campuses: A Single-Site Case Study on Pushing the Boundaries of the Freedom of Speech.” June 2016. RP

**One of the** major limitations for this project **is that it is a short-term study that will take place over two quarters (20 weeks). With more time, more information could have been gathered that mirror situations that have taken place at California Polytechnic State University to showcase that this either is or is not an isolated event. Another limitation is the lack of resources available. For example, there are experts in the field of study, mainly constitutional theorists, which could have provided more insight; however, I do not have the money, or means, to get in contact with many of these individuals** because many of them are not located within the Central Coast of California.

### A2 International Ev

#### Discount international evidence on hate speech – there’s no one definition of what hate speech is.

**Malik:** Malik, Kenan [I am a writer, lecturer and broadcaster. My latest book is *The Quest for a Moral Compass: A Global History of Ethics*.] “Why hate speech should not be banned.” *Pandaemonium.* 2012. RP

Kenan Malik: **I am not sure that ‘hate speech’ is a particularly useful concept. Much is said and written, of course, that is designed to promote hatred. But it makes little sense to lump it all together in a single category, especially when hatred is such a contested concept**. In a sense, hate speech restriction has become a means not of addressing specific issues about intimidation or incitement, but of enforcing general social regulation. **This is why if you look at hate speech laws across the world, there is no consistency about what constitutes hate speech. Britain bans abusive, insulting, and threatening speech. Denmark and Canada ban speech that is insulting and degrading. India and Israel ban speech that hurts religious feelings and incites racial and religious hatred. In Holland, it is a criminal offense deliberately to insult a particular group. Australia prohibits speech that offends, insults, humiliates, or intimidates individuals or groups. Germany bans speech that violates the dignity of, or maliciously degrades or defames, a group. And so on. In each case, the law defines hate speech in a different way.**

### Wisconsin Good

#### Wisconsin is a good example—universities model from it

PATRICIA HODULIK 91 [B.A., 1972; J.D., 1976, University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration], “RACIST SPEECH ON CAMPUS”, THE WAYNE LAW REVIEW 37 no. 3, 1991, BE

To assess the policy implications of adopting university rules regulating hate speech, it is necessary to understand both the context in which regulatory efforts arose, and the nature of the rules that emerged following public debate and controversy over these efforts. A wave of racist incidents on college campuses provided the primary impetus for the adoption of regulations to limit discriminatory speech. The University of Wisconsin System's rule, for example, was approved following a series of highly publicized episodes of racist conduct involving university students: A fraternity placed a large cardboard caricature of a black manon its lawn to announce a "Fiji Island" party;4 another fraternity held a party featuring a "Harlem room," in which it served watermelon punch and fried chicken, and students wore black- face;5 racist name-calling led to an altercation at a third fraternity house.6 Many other universities across the country experienced similar events, and many-like the University of Wisconsin System-responded with policies or rules prohibiting racist or discrim- 7 inatory harassment.

### Top level

#### Err neg on the empirics debate – their evidence is tainted by psychological biases – we limit things like fighting words all the time with no bad impacts.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “Pressure Valves and Blooded Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulations.” *California Law Review.* Volume 84. July 1994. RP

**An examination of the current landscape of First Amendment excep- tions reveals a similar pattern. Our system has carved out or tolerated doz- ens of "exceptions" to the free speech principle: conspiracy; libel; copyright; plagiarism; official secrets**; misleading advertising; words of threat; disrespectful words uttered to a judge, teacher, or other authority figure; and many more. 2 **These exceptions (each responding to some inter- est of a powerful group)83 seem familiar and acceptable**, as indeed perhaps they are. **But a proposal for a new exception to protect some of the most defenseless members of society, 18-year old black undergraduates at predominantly white campuses**, **immediately produces consternation**: the First Amendment must be a seamless web. It is we, however, who are caught in a web, the web of the familiar. **The First Amendment seems to us useful and valuable. It reflects our interests and sense of the world**. It allows us to make certain distinctions, toler- ates certain exceptions, and functions in a particular way we assume will be equally valuable for others. **But the history of the First Amendment, as well as the current landscape of doctrinal exceptions, shows that it is far more valuable to the majority than to the minority**, far more useful for confining change than for propelling it.8"